Public Utilities

FORTNIGHTLY

July 17, 1947

WHAT IS AHEAD IN TELEPHONE REGULATION
By Duane T. Swanson

‹ ›

Employees Want Answers
By J. Herbert Walker

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Rate Regulation *v.* Wage Regulation
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Britain's Problem of Transport Nationalization
By Herbert T. Banyard

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Public Utilities Fortnightly

VOLUME XL *July 17, 1947* NUMBER 2

Contents of previous issues of Public Utilities Fortnightly *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

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Pages with the Editors

For years, New York city has refused to allow ordinary standards of regulation to be applied to her urban transit fares. First (and unsuccessfully) under private ownership and later under public ownership, the nickel fare became a consecrated political tradition, seemingly in defiance of all the forces of economics. But even for New York city, political rate making cannot provide the final answer. Deficits can be temporarily shifted from one group of taxpayers to another. But eventually limits are being reached and the deficits grow larger.

With the state refusing to underwrite New York city's political obsession for retaining a nickel fare at all costs, the city is faced with doing something or other about its increasing debt and declining subway service standards. Some day the people in other states and communities, who have from time to time been misled by the fallacy of artificial and arbitrary rate making for public utilities, must come to reckon with the fundamental truth that the cost of operating a public utility service has to be borne by somebody, or such service cannot go on.

It follows that if the ratepayers are not taking care of the full cost of the service, taxpayers or some other group must make up the difference. The trouble usually starts when these other groups find out about these arrangements and start objecting.

Conventional utility rate making needs no new vindication, even under public ownership in New York city. The success of the various major public utility enterprises in the United States, as a whole, bears witness to the fact that

DUANE T. SWANSON

state commission regulation, first established on a full-powered basis in a few states in the first decade of the Twentieth Century, comes the nearest to supplying the answer for satisfactory, long-range control of what is essentially a public service monopoly.

No one will dispute the fact that the great gas, electric, telephone, and transit utility industries of the United States have been a success—in terms of expansion and providing well-patronized service to more customers than similar services in all the rest of the world combined. American public service, functioning under a just but elastic system of commission control for more than a half-century, has pointed the way for establishing the high standard of living for the average American citizen, in which we all take so much pride.

Perhaps similar results could have

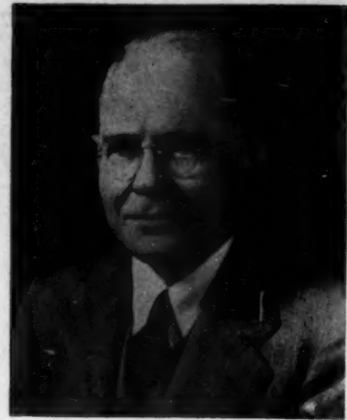
been obtained under the political systems so popular in foreign countries, notably Europe. But the fact remains that such foreign experience so far shows a miserable comparison. The American plan for maintaining essential public service may not be perfect, but it certainly has yet to encounter a successful rival.

No small amount of credit for this success is due to the long succession of state public service commissioners who have shared the major responsibility for controlling public utility service in this country. Their fairness, their patience, and their devotion to public service have stood through the years like faithful lighthouses against the passing storms of political passion. Attacked from time to time, both from the left and the right, the state commissions still are with us, as vigorous, as useful, and as effective as ever. Indeed, the strategic position of the state commissions under recent decisions of the Supreme Court is probably stronger today than at any period in the history of regulation.

It is with such thoughts in mind that we salute the annual meeting of the National Association of Railroad and Utilities Commissioners as they convene for their fifty-ninth national convention in Boston, beginning July 14th. We know that their deliberations will be profitable and enlightening, not only for the attending members, but also for all of those regulated, as well as regulators, who are concerned with problems of public utility regulation in the United States.

* * * *

We are honored to present in this issue a leading feature article by the 1946-47 president of the NARUC. He is the genial Duane T. Swanson, who was first elected to the Nebraska State Railway Commission in 1938, and of which he is still a member. Commissioner Swanson, who was elected to head the NARUC at the annual convention last year in Los Angeles, is a native of Nebraska who started his career as a practicing attorney at law in Omaha. The subject of his article in this issue—the future of telephone regulation—was first covered in an address which Commissioner Swanson gave at the spring executive meeting of the United States Independent Telephone Association in Chicago last April.



J. HERBERT WALKER

* * * *

J. Herbert Walker, whose article on "Employees Want Answers" begins on page 78, is a graduate of the University of Michigan (BME, '11). He has been employed by the Detroit Edison Company since 1912. He became vice president of the Detroit Edison Company in 1945, taking charge of personnel matters and assisting the president.

* * * *

Herbert T. Banyard, whose article on British transport problems as a result of recent nationalization legislation begins on page 93, is an associate member of the (British) Institute of Transport. Speaking from the background of a British businessman, Mr. Banyard gives us a just, yet sympathetic, analysis of the reasons behind the British legislation. His article was first published in the British economic publication, *Fortnightly Magazine*, with the United States publishing rights assumed by Public Utilities Fortnightly.

The next number of this magazine will be out July 31st.

The Editors

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In Washington and the Utilities

In Exchange Calls and Gossip

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In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 129–160, from 68 PUR(NS)

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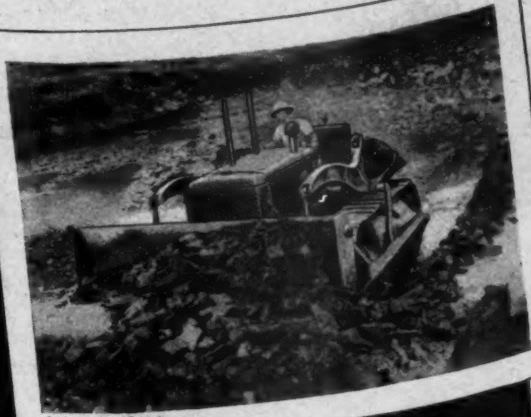

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Remarkable Remarks

"There never was in the world two opinions alike."
—Montaigne

Harold E. Stassen
Presidential candidate.

"America should shun government ownership of essential industries just as she would some paralyzing plague."

Harold L. Ickes
Former Secretary of Interior.

"All this talk about a third party next year is by so-called intellectuals who never carried a precinct in their lives."

Paul G. Hoffman
President, Studebaker Corporation.

"Government has the general responsibility of providing an economic climate in which free labor, free agriculture, and free business can flourish."

J. F. Lincoln
President, Lincoln Electric Company.

"We cannot continue the chaos of collective bargaining with its war and destruction. That will mean the disappearance of our economy and inevitably lead to totalitarianism."

Philip D. Reed
Chairman, General Electric Company.

"The people of this country have clearly demonstrated at the polls and elsewhere that a free enterprise economy —not a socialized nor even a too regulated one—is what they want."

Gordon R. Clapp
Chairman, Tennessee Valley Authority.

"There is emerging in the Tennessee valley a public policy under which management methods are judged good if they get material results and at the same time foster freedom for the individual."

George E. Sokolsky
Writing in The (New York) Sun.

"Profits are a payment for the use of money to be expended upon tools for production and distribution. For the word, profits, only one can be substituted; namely, taxes—as, for instance, when the government of the United States finances TVA out of taxes, or the city of New York finances its overwhelming subway deficit out of taxes."

John W. Nickerson
Industrial engineer, Bigelow, Kent, Willard Company.

"The manner in which labor can most equitably share in technological improvements has not been satisfactorily solved. It is suggested that a fair solution to the present conflict would be for management to distribute promptly to labor, in lump sums, a participation in the savings made in labor costs, allowing the wage structure to remain fair in proper balance."

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President, Manufacturers Association of Connecticut.

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NELSON A. ROCKEFELLER
President, Rockefeller Center, Inc.

"The productive capacity of men and women everywhere must be increased so that they may look forward to greater opportunity for health and education, for useful work, for freedom and happiness."

EMIL SCHRAM
President, New York Stock Exchange.

"There is only one way to lift our living standards—one way to provide every American with even more of the good things which he already has in unique abundance—and that is to turn out more and better goods."

JOHN W. HANES
Chairman, Tax Foundation.

"Government is not worth the price today. . . . High taxes are the real inflationary threat. Everything we buy is higher because the manufacturers, the jobbers, and the sellers tack on an increase to take care of their own high taxes."

ALVIN E. DODD
President, American Management Association.

"No matter how powerful a combination of money, machines, and material a company—or a nation—may have, it is doomed to sterility and death unless the people who comprise it are articulate, thinking, and willing people."

DAVID LAWRENCE
Columnist.

"It is apparent that the amount of ignorance about the operations of our profit-and-loss system is tragic and that this is one of the main causes of labor-management friction which neither laws nor strikes can cure but which education alone can clarify."

CARROLL FRENCH
Industrial relations director, National Association of Manufacturers.

"I do not believe the present state of class conflict, bitterness, and distrust will endure. I am confident the workers themselves will reject it and, in the end, repudiate the type of leadership seeking to foment and perpetuate employee distrust and to destroy sound relations."

CYRUS S. CHING
Director of industrial and public relations, United States Rubber Company.

"Industry so far has not done as good a job of selling itself to its employees as should or could be done. Industrial employees would be more concerned with production than they often are if they knew more about the economics of it and what it means to the entire country and the world."

THOMAS E. DEWEY
Governor of New York.

"The very right of private employees to strike depends on the protection of constitutional government under law. Every liberty enjoyed in this nation exists because it is protected by government which functions uninterruptedly. Paralysis of government is anarchy, and in anarchy liberties become useless."

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BILL ANALYSIS - Residential
PERIOD - Year 1946 RATE - R - 1

Kw.Hrs.	No.Bills	Consumption in Kw.Hrs.	CUMULATIVE No.Bills	CUMULATIVE Consumption in Kw.Hrs.	Consolidated Factor
0	1644	0	1644	0	0
1	575	575	2219	575	343920
2	489	978	2708	1553	687265
3	449	1347	3157	2900	1030121
4	429	1716	3586	4616	1372528
5	413	2065	3999	6681	1714506
6	415	2490	4414	9171	2056071
7	434	3038	4848	12209	2397221
8	454	3632	5302	15841	2737937
9	418	3762	5720	19603	3078199
10	458	4580	6178	24183	3418043
11	391	4301	6569	28484	3757429
12	437	5244	7006	33728	4096424
13	469	6097	7475	39825	4434982
14	467	6538	7942	46363	4773071
15	491	7365	8433	53728	5110693
16	537	8592	8970	62320	5447824
17	542	9214	9512	71534	5784418
18	549	9882	10061	81416	6120470
19	541	10279	10602	91695	6455973
20	605	12100	11207	103795	6790935
21	595	12495	11802	116290	7125292
22	607	13354	12409	129644	7459054
23	602	13846	13011	143490	7792209
24	654	15696	13665	159186	8124762
25	600	15000	14265	174186	8456661
26	658	17108	14923	191294	8787960
27	653	17631	15576	208925	9118601
28	734	20552	16310	229477	9448589
29	692	20068	17002	249545	9777843
30	726	21780	17728	271325	10106405
290	451	130790	281885	37899547	56366457
291	409	119019	282294	38018566	56430136
292	409	119428	282703	38137994	56493406
293	415	121595	283118	38259589	56556267
294	412	121128	283530	38380717	56618713
295	403	118885	283933	38499602	56680747
296	377	111592	284310	38611194	56742378
297	400	118800	284710	38729994	56803632
298	384	114432	285094	38844426	56864486
299	384	114816	285478	38959242	56924956
300	396	118800	285874	39078042	56985042
301 350	16421	5315086	302295	44393128	59537278
351 400	11248	4205570	313543	48598698	61407098
401 450	7712	3269313	321255	51868011	62807061
451 500	5499	2605788	326754	54473799	63878799
501 600	6916	3773512	333670	58247311	65383711
601 700	3925	2534235	337595	60781546	66359846
701 800	2399	1793920	339994	62575466	67031466
801 900	1460	1234673	341454	63810139	67509139
901 1000	1026	973139	342480	64783278	67867278
1001 1200	1193	1299858	343673	66083136	68352336
1201 1400	607	781300	344280	66864436	68662036
1401 1600	409	609631	344689	67474067	68874067
1601 1800	232	391658	344921	67865725	69023125
1801 2000	176	333132	345097	68198857	69132857
2001 2500	232	510458	345329	68709315	69296815
2501 3000	97	261402	345426	68970717	69384717
3001 4000	76	260083	345502	69230800	69478800
4001 5000	38	167649	345540	69398449	69518449
5001 6000	11	59289	345551	69457738	69535738
6001 7000	7	45379	345558	69503117	69545117
7001 8000	4	29369	345562	69532486	69548486
8001 9000			345562	69532486	69550486
9001 10000	2	18842	345564*	69551328*	69551328*

ILLUSTRATION OF TYPICAL BILL ANALYSIS

Utilities Almanack

JULY

17	Th	¶ *Interstate Oil Compact Commission summer quarterly meeting will be held, Great Falls, Mont., Aug. 11–13, 1947.*
18	F	¶ *Appalachian Gas Measurement Short Course will be held, West Virginia University, Morgantown, W. Va., Aug. 25–27, 1947.*
19	Sa	¶ *American Institute of Electrical Engineers, Pacific general meeting, will be held, San Diego, Cal., Aug. 26–29, 1947.*
20	S	¶ *American Society of Mechanical Engineers will hold meeting, Salt Lake City, Utah, Sept. 1–4, 1947.*
21	M	¶ *American Water Works Association begins annual conference, San Francisco, Cal., 1947.*
22	Tu	¶ *Mid-West Gas School and Conference will be held, Iowa State College, Ames, Iowa, Sept. 8–10, 1947.*
23	W	¶ *Instrument Society of America will hold second annual conference and exhibit, Chicago, Ill., Sept. 8–12, 1947.*
24	Th	¶ *Michigan Independent Telephone Association will hold meeting, Lansing, Mich., Sept. 17, 18, 1947.*
25	F	¶ *Indiana Electric Association will hold meeting, French Lick, Ind., Sept. 17–19, 1947.*
26	Sa	¶ *American Water Works Association, Michigan Section, will hold meeting, Bay City, Mich., Sept. 18–20, 1947.*
27	S	¶ *Rocky Mountain Independent Telephone Association will hold meeting, Salt Lake City, Utah, Sept. 22, 23, 1947.*
28	M	¶ *American Water Works Association, Kentucky-Tennessee Section, will hold meeting, Louisville, Ky., Sept. 22–24, 1947.*
29	Tu	¶ *American Bar Association will hold annual meeting, Cleveland, Ohio, Sept. 22–26, 1947.*
30	W	¶ *Pacific Coast Gas Association will hold annual meeting, San Diego, Cal., Sept. 23–25, 1947.*

Courtesy, National Archives Building, Washington, D. C.

"Justice without wisdom is impossible."
—FROUDE

Public Utilities
FORTNIGHTLY

VOL. XL, No. 2 JULY 17, 1947

What Is Ahead in Telephone Regulation

A review of the regulatory problem facing the telephone industry from the standpoint of the regulatory authority.

BY DUANE T. SWANSON*

PRESIDENT, NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS, AND MEMBER, NEBRASKA STATE RAILWAY COMMISSION

THOSE famous words: "Mr. Watson, come here; I want you," uttered by Alexander Graham Bell on that memorable day, March 10, 1876, virtually called a new major utility industry into being.

From that momentous announcement came a development and use of the telephone hardly realized by Bell himself. In a letter sent by him to the investors in his new company in March, 1878, among other things, it was said:

> . . . At the present time we have a perfect network of gas pipes and water pipes through our large cities. We have main pipes laid under the streets communicating by side pipes with the various dwellings, enabling the members to draw their supply of gas and water from a common source.
>
> In a similar manner, it is conceivable that cables of telephone wires could be laid underground, or suspended overhead, communicating by branch wires with private dwellings, country houses, shops, manufactories, etc., etc., uniting them through the main cable with a central office where the wires could be connected as desired, establishing direct communication between any two places in the city. Such a plan as this, though impracticable at the present moment, will, I firmly believe, be the outcome of the introduction of the telephone to the public. Not only so, but I believe, in the future, wires will unite the head offices of the telephone company in different cities, and a man in one part of the country may communicate by

*For personal note, see "Pages with the Editors."

word of mouth with another in a distant place.

A new industry so clothed with a public interest that it early took its place with others long since under the supervision and control of regulatory tribunals. The early American colonies brought with them the English system of regulating business affected with a public interest, or so-called "common callings." Later came the ruggedly individualistic theory of competition, followed by direct statutory control, at the insistence of both ratepayer and investor, municipal control, state regulatory commissions, and, more recently, to some extent at least, Federal regulatory commissions. In the present era there is a strong tendency to restore to the states their jurisdiction over local utilities, and thus decentralize government.

The development and expansion of utilities affected with a public interest, now commonly recognized as a "regulated monopoly," brought along the all-important problems of regulatory commissions, ratepayers, investors, and management of the factors necessary in the establishment of a fair and equitable rate base.

THE "granddaddy" of them all, laying down the rules of this perplexing problem, was the famous case of Smyth *v.* Ames,[1] argued on April 5, 6, and 7, 1897, and decided by the Supreme Court of the United States on March 7, 1898. Mr. Justice Harlan, delivering the opinion of the court, as relates to those factors, said:

> We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth.

It is interesting to note here that William Jennings Bryan, appearing as counsel for the state of Nebraska, contended that cost of reproduction should be the standard, while counsel for the railroad urged that investment represented by the outstanding securities of the railroad should be used, to determine the measure of fair value.

DOWN through the years the principles expressed in that opinion survived numerous attacks, including dissenting opinions of the court itself. It was left, however, to the decision of the Supreme Court in the Natural Gas Pipeline Case,[2] to provide the vehicle to override the long-established majority opinion. The court said:

> The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made, and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the commission's

[1] 169 US 466, 546.

[2] (1942) 315 US 575, 42 PUR(NS) 129.

order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end.

In a concurring opinion in that case, Justice Black said:

. . . While the opinion of the court erases much which has been written in rate cases during the last half-century, we think this is an appropriate occasion to lay the ghost of Smyth *v.* Ames (*supra*), which has haunted utility regulation since 1898.

Then followed the far-reaching decision in the Hope Natural Gas Company Case,[3] in which the court sustained an order of the Federal Power Commission in what the commission called a "legitimate cost" rate base. This meant that Smyth *v.* Ames was on its way out as a ruling case. The following year, in the case of the Panhandle Eastern Pipe Line Company,[4] the Supreme Court sustained the Federal Power Commission's order in which the commission refused altogether to receive evidence of reproduction cost of the plant involved.

In the face of such "reverse order of things" regulatory commissions are still puzzled with the same question: What is a fair rate under all of the circumstances? So far as the ratepayer, at least, is concerned, the formula should be the actual cost of operation plus a fair rate of return based upon the fair and reasonable value of the property. A formula, in this instance based upon actual capital investment, was sustained in the Colorado Interstate Gas Company Case,[5] decided in 1945. After citing some earlier cases, the court said:

. . . In those cases we held that the question for the courts when a rate order is challenged is whether the order viewed in its entirety and measured by its end results meets the requirements of the act. That is not a standard so vague and devoid of meaning as to render judicial review a perfunctory process. It is a standard of finance resting on stubborn facts. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. . . . By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Now that prevailing decisions of the highest court in the land tend to sustain a commission rate order, when "viewed in its entirety and measured by its end results" it appears to be a reasonable conclusion, it is quite clear that commissions thus clothed with a much enlarged sphere of judicial discretion will be even more alert to ground their orders on a fair and reasonable basis for all concerned.

Important commission decisions rendered since the turn of events hereinbefore set forth firmly bear out such a premise.

[3] (1944) 320 US 591, 51 PUR(NS) 193.
[4] (1945) 324 US 635, 58 PUR(NS) 100.
[5] 324 US 581, 58 PUR(NS) 65, 81.

¶ "More *and more the public is groping for a satisfactory solution to public utility strikes, including wage adjustments, with resultant rate revisions. . . . It has been estimated by observers that in the neighborhood of 1,000 bills have been introduced in Congress and in various state legislatures, dealing, in one way or another, with labor."*

On February 24, 1947,[5a] the Illinois commission denied the application of the Illinois Commercial Telephone Company for a 25 per cent increase. This action was taken when the only rate base evidence presented by the company at the hearing was based on so-called structural value, analogous to reproduction cost. The commission rejected this evidence, holding that the rate base should be based on original cost. It was ruled that, "from the record as it now stands, the commission must regard the present rates as reasonable." The company, which is a subsidiary of General Telephone Corporation, announced that it would request a rehearing, thus taking the statutory step toward an appeal.

This emphasizes the importance of companies seeking rate increases to fully justify their applications by evidence and exhibits submitted under rate case procedures and policies applicable in the particular state where the application is filed.

It should not be considered facetious at this point to refer to an opinion entered January 13, 1947, in Old Colony Bondholders *v.* New York, New Haven & Hartford Railroad Company. Dissenting, in part, from a decision sustaining the purchase price fixed by the Interstate Commerce Commission to be paid for assets of a secondary debtor in a railroad reorganization proceeding, Judge Frank of the second circuit court of appeals objected to the commission's failure to break valuation down into items or express it in dollars. Saying that if the commission is sustained in this case its valuations will be acceptable no matter how contrived, Judge Frank continued:

> In that event it would be desirable to abandon the word "valuation"—since that word misleadingly connotes some moderately rational judgment—and to substitute—"woosh-woosh." The pertinent doctrine would then be this: "When the ICC has ceremonially woosh-wooshed, judicial scrutiny is barred." It would then be desirable to dispense, too, with the commission's present ritualistic formula, "Taking into consideration, etc.," replacing it with patently meaningless words—perhaps the same words spelled backward (*i.e.,* "Gnikat otni noitaredisnoc, etc.").

ONLY time will reveal the Utopia for all concerned: a fair return upon the fair value of the property dedicated to the public use and furnishing a reasonable service. A uniform formula appears to be far away. Several states have enacted laws making it mandatory to apply the reproduction new, less depreciation, theory. Other commissions seem to be bound by state supreme court decisions adopting Smyth *v.* Ames principles. Whether a test case could now result in a reversal and an acceptance of the newer United States Supreme Court decisions remains to be seen. A close study of state laws and decisions in this connection is indicated.

In a rate case discussion, a very important item, especially in the current period, is the wage scale in total operating cost, which raises, parenthetically, the possibility of the necessity for regulatory commissions being a party, at least, in the adjustment of labor relations. More and more the public is groping for a satisfactory solution to public utility strikes, including wage adjustments, with resultant rate revisions. For instance, a bill was introduced in the recent session of the Maryland legislature vesting strike, labor disputes, wage adjustments, etc., with the public service commission of that state. It was not enacted. But it is sympathetic of the trend in thinking now

[5a] 68 PUR(NS) 453.

Utility Wage Regulation

"It is not beyond the realm of reasonableness to speculate that, before the state legislatures have adjourned this year, several laws, at least, will have been enacted, dealing with . . . problem of utility wage regulation as distinguished from the older problem of utility rate regulation. Legislation, again, would be molded as a result of public opinion."

going on along these lines. It has been estimated by observers that in the neighborhood of 1,000 bills have been introduced in Congress and in various state legislatures, dealing, in one way or another, with labor.

THE question here seems to be: If it is necessary for regulatory commissions to consider the wage scale in operating costs, should not the commission also participate in the wage scale adjustment?

It is not beyond the realm of reasonableness to speculate that, before the state legislatures have adjourned this year, several laws, at least, will have been enacted, dealing with this problem of utility wage regulation as distinguished from the older problem of utility rate regulation. Legislation, again, would be molded as a result of public opinion. It is not the purpose here to discuss the merits or demerits of such proposed legislation. Suffice it to say that it is food for thought: extremely important and worthy of concentrated perusal and deliberation.

During the war years just passed, telephone rates, on the whole, were more or less frozen, for one reason or another. Since the war and continuing at the present time, all regulatory commissions are nearly submerged by the weight of applications for rate revisions. During the past six months applications have been filed by the Bell system companies in some 27 states. Some have been granted. Emergency, temporary orders have been entered in others. Most are still pending either for hearing or for further investigation.

The Federal Communications Commission is actively considering the possibilities of a substantial reduction in the rates of the Long Lines Department of the American Telephone and Telegraph Company. At the November conference of the National Association of Railroad and Utilities Commissioners, a resolution was adopted

requesting the FCC "to proceed under the coöperative agreement plan before considering any further reduction in the interstate message toll telephone rate schedules," and further requested "that ample opportunity first be given to each of the states to present testimony on the disparity existing between interstate and intrastate rates, and that in all cases a hearing be held."

In response to that resolution the Federal Communications Commission invited the association's special telephone committee to discuss the matter. That committee met with the FCC in Washington on February 20th. The special telephone committee then submitted its recommendation to the executive committee which was also in session, suggesting "that an immediate study be made of the separation methods now in use, with the goal of revising the separation formulae so as to give greater recognition and weight to the intrastate operations of telephone service."

The plan was to obtain expert assistance from the personnel of the FCC and, together with a staff of experts from the state commissions, begin the work immediately in the offices of the AT&T in New York, under the supervision of L. T. Hayner, noted regulatory engineer. A preliminary report on this study was completed within a 60-day period and approved by the NARUC executive committee meeting in St. Louis last May (1947).

It is of especial interest to independent telephone companies to study the possible revision of the separation procedures presently being followed. It raises, among other things, the very interesting question of whether associated companies and connecting independent companies are now receiving an equitable share of the revenue on interstate toll calls originating on their lines. It is possible that the investigation may result in a shifting of a substantial amount of revenue from the Long Lines Department to the associated companies and this, in turn, might conceivably call for a reëxamination of some of the division contracts with the independent connecting carriers.

If, as the technical subcommittee report indicates, a revision of the present method of separation and division of operating revenues and expenses is justified, it will leave a greater share of toll revenues available to the local exchange and thus reduce the requirements for rate increases under applications now pending.

If telephone companies own both exchange and toll property, are entitled to a fair return upon the fair value of such property, the question might arise whether from a practical angle it would be commensurate with fair dealing to undertake the placing of each class of property on its own feet. If the toll property, on the one hand, earns more than a reasonably fair return on the surplus devoted to operating the exchange property, it might raise a question of the benefit, if any, accruing to the exchange subscriber by reducing toll rates and adding the reduction to the existing exchange rates. Assuming, of course, that existing exchange rates must be increased.

The filing of applications for rate adjustments is not confined to Bell system companies. Independents likewise find it necessary, and for similar reasons.

In the state of Washington the independents united and filed a joint application. In an order dated December 16, 1946, the department of public utilities authorized 36 independent telephone companies, serving some 99,000 subscribers, to file tariffs increasing exchange rates.[6] In its order, the commission, among other things, said:

> The department finds from the evidence that the financial and economic welfare of many of said independent telephone companies has been decidedly and adversely affected by the impact of economic changes and conditions caused by the war and which carried over into the postwar period. . . . The department also finds that generally the participating telephone companies cannot now render adequate and efficient service to their present subscribers and are not in a position, either from a physical plant or financial standpoint, to fill the "held orders" now on file; that, under existing conditions, most of the independent telephone companies have little or no ability to attract new capital. . . .

The North Carolina commission in an order entered December 30, 1946, in Docket No. 3838, authorized a 5-cent increase in the basic charge per message on most intrastate calls to correspond with a similar increase granted the Southern Bell. This action was likewise the result of a group filing by the independents of the state.

These two decisions may serve as satisfactory precedent and furnish the impetus for similar actions in various states.

[6] Cause No. U-8006.

In passing, it may be of interest to refer briefly to one of the most recent developments in the telephone industry, which is important to the independents as well as Bell system companies, and that is the matter of mobile telephone service. An actual demonstration met with favor at the last NARUC convention.

The Lincoln Telephone & Telegraph Company has recently received licenses from the Federal Communications Commission to cover construction permits for experimental class 2 highway mobile radio stations, and 10 mobile units to be used on a commercial basis. In a letter from the FCC to the company, dated February 18, 1947, the following significant statement appeared, that the grant of the radio license "will not result in any change in your present status as a telephone carrier within the exemption clause of § 2(B)(2) of the . . . act."

This means that the mere fact that radiotelephone messages may be received by the Lincoln Company from outside Nebraska will not operate to bring that company under general regulation by the FCC. This is a very important pronouncement because, if mobile telephone communication were held to bring the company under FCC jurisdiction, it would discourage many companies from expanding into this new field of communication service. It

¶ "DURING *the war years just passed, telephone rates, on the whole, were more or less frozen, for one reason or another. Since the war and continuing at the present time, all regulatory commissions are nearly submerged by the weight of applications for rate revisions. During the past six months applications have been filed by the Bell system companies in some 27 states."*

is too early to say that the FCC will concede exemption from jurisdiction in all cases, and it may be that, where a company is situated close to a state border so that a substantial portion of the radiotelephone communications are received from outside the state, the company will be held to be subject to the Federal Communications Act.

ANOTHER very recent and important decision of the Federal Communications Commission was the final order of that commission on March 25th relating to telephone recording devices.[7] The proceeding was initiated by the commission on October 31, 1945. In the hearing held on January 10 and 11, 1946, the National Association of Railroad and Utilities Commissioners urged: (1) that no order should be entered which would impair complete freedom of action by the state commissions to regulate telephone facilities while used for exchange service and for intrastate service; (2) that the order should not permit anyone other than the telephone company to physically connect a recording device to a telephone circuit; and (3) that the order should not permit physical connection of recorders to telephone circuits unless so arranged that the user can make a complete physical disconnection while using the telephone for intrastate toll or exchange purposes.

The Bell system contended, among other things, that any regulation by the Federal commission of the use of recording devices would infringe upon state regulatory jurisdiction.

The proposed report was issued on August 8, 1946, to which exceptions were thereafter filed.

[7] FCC Docket No. 6787.

It was held in the final report recently released that recording devices may be used in connection with interstate telephone calls, and that tariff provisions now barring such use are unreasonable and unlawful. The report (1) permits the use of inductive and acoustic recorders as well as those which are physically connected; (2) omits the former requirement that directory listings indicate stations using recorders; (3) requires inclusion in telephone directory of a full-page statement informing telephone users of the nature and use of recording devices and of the tone warning signal; (4) requires telephone companies to make available a special telephone number which, when dialed or called, would produce the tone warning sound; (5) provides that no recorder should be used unless, at the will of the user, it can be physically connected to and disconnected from the telephone line or switched on and off; and (6) provides that telephone companies, which are required to install and maintain all physically connected recorders, shall coöperate with recorder device companies in sales demonstrations of recording equipment.

IN general it can be said that the telephone industry is fully aware of its public service responsibilities and obligations to the general public. Troublesome problems arise in individual cases and will continue to arise. These problems, however, do not ordinarily involve any controversy regarding the standard to be applied. That standard can be simply stated: adequate and nondiscriminatory service at reasonable and nonpreferential rates. The conflicts which arise tend usually to involve questions of fact.

Thus it becomes important, especially in this day when our commercial and industrial life is so complex, that regulators and management alike make every effort to ascertain the facts. Regulators have the duty to keep themselves informed upon all phases of the industry, not because of any desire to dabble in management, but because it is only with a full understanding of management's problems that they will be equipped and ready to deal in the public interest with individual situations as they arise. Management ought to assist the regulators in their endeavor to keep informed by seeing that the pertinent facts regarding their industry are brought fully to the attention of the regulators. It is especially important here that management anticipate the problems of the future and not only take definite action of their own to do what can be done to forestall critical situations, but also keep the regulators advised of these forthcoming problems. Furthermore, they should solicit suggestions and assistance in every way compatible with the duties and functions of the regulatory agency.

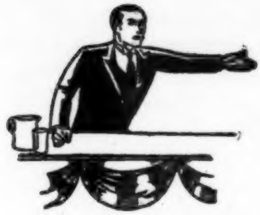
Automatic Antitrust Control

"TODAY *the approach of any corporation to anything like a monopoly position, no matter how big it is or how rapidly it is growing, is virtually impossible. The antitrust laws and their administration must be credited with some contribution to the present state of affairs, but far more powerful has been the rapid development of scientific technology, in the workshop and in the materials-producing industries.*

"A vivid picture of the modern industrial scene is drawn by Mr. Guilfoyle of this newspaper's staff in his article on General Electric Company . . . It brings out in striking fashion the pertinent fact that big enterprises have big competitors to contend with—that as they diversify their products and even engage in the manufacture of their own raw materials, they find other giants of industry doing likewise and contending in every market, old and new.

" 'The fight for business in the period ahead,' Mr. Guilfoyle quotes President Charles E. Wilson of GE as saying, 'will be more rugged than anything we've been in up to now.' Unquestionably most if not all company managers would echo these words."

—EDITORIAL STATEMENT,
The Wall Street Journal.



Employees Want Answers

A question box which has proved to be a valuable feature of Detroit Edison's employee magazine.

By J. HERBERT WALKER
VICE PRESIDENT, THE DETROIT EDISON COMPANY

THIS article describes a method of communication with employees which we have used for the past two years in the Detroit Edison Company and which seemingly fills a need that has not been met by any of the other means used by the company for that purpose. It consists of a so-called question "box" in the company's monthly employee magazine *Synchroscope*.

Most alert managements have become increasingly aware, during recent years, of the need of better means of communication with employees, and many different channels and methods have been established for that purpose. The Detroit Edison Company has for a long period been using many of these well-known media. The monthly magazine has perhaps been the most important from the standpoint of wide distribution and employee interest. In addition, there have been letters from the president on specific topics and there have been numerous booklets and official company statements.

Talks by officers of the company before various employee social and educational clubs have also been valuable. However, it had become evident that such channels were almost entirely one-way channels; that they told employees what management believed it was desirable that they know and understand, with no real opportunity for the individual employee to express himself as to what he wanted to know about. Furthermore, the subject matter used in all of these media was necessarily confined to major subjects such as announcements of important personnel policies, explanations of benefit plans, and major news about technical developments or improvements of the company's facilities for serving the public. These methods and media do not provide a means of dealing with those points of sensitivity and friction which exist today in the increasingly complex relationship between employer and employee. Because of the more critical attitude of the employee regarding the details of his working conditions, some effective method of learning about these points of sensitivity seemed essential. Furthermore, there seemed to be a need for some method

whereby answers could be given, direct from management, to questions of general interest.

It was a realization of this state of affairs that led to the inauguration in 1945 of the question box in our magazine *Synchroscope*. The idea, at first regarded as highly experimental, was announced without fanfare but with the following simple statement: "*Synchroscope* has asked J. H. Walker, vice president, to answer each month in this column questions pertaining to company matters. Only questions of general interest will be answered."

Starting off with a few questions, fictitious as to authorship but believed to be in the minds of many employees, the idea gained immediate popularity and now the flow of spontaneous questions is such that the question box occupies three to five pages in each month's issue. The number of questions in each issue (from an organization of 9,500 employees) averages about 20. They fall into several different categories, distributed approximately as follows:

Personnel Policies. About 75 per cent of the questions pertain to our personnel policies and the majority of those have to do with benefits such as sick pay, insurance, and the retirement plans.

We thought we had already explained such matters adequately, but some of the questions indicate lack of complete understanding, both of details and of underlying principles. Naturally, questions that point out areas where there is such misunderstanding are valuable.

Suggestions. About 10 per cent are constructive suggestions, usually having to do with some general company matter rather than with the work of the employee's own department.

The remainder are miscellaneous questions and comments about a variety of matters.

One might expect that sooner or later most of the pent-up questions would have been asked and that interest would fall off. However, after two full years of operation there is no sign of such a trend. On the contrary the number of questions and the vitality of interest displayed are both on the increase.

In each issue of the magazine, a self-addressed return card is included. It was found that the number of questions was greatly increased by this simple device.

A Fundamental Point. It was immediately realized that the plan would not succeed unless attention was given to the anonymous question. It is, of course, a commonly held idea that the anonymous communication deserves no consideration and should immediately go into the wastebasket. However, it seems apparent—and our experience with the question box certainly bears this out—that in the somewhat unbalanced relationship between employer and employee, anonymity is regarded by the employee as an essential to his protection, in spite of all the reassurance to the contrary that management might give. This seems not only perfectly natural, but to have a degree of realistic truth; for regardless of the intentions and good faith of top management, it is impossible to avoid completely the possibility of some degree of criticism becoming directed at the employee by a supervisor or by fellow employees. Therefore, in the question

The Question Box

RETIREMENT PLAN

Please answer. If a person worked 25 years or more for The Detroit Edison Company and was retired at 65 by the Company, will he receive vacation checks each summer same as if he had been working?

Retired Employe

The Retirement Plan does not have any such provision. The purpose of vacation pay is to permit an employe to have a vacation without a reduction of his normal income. In the case of a retired employe, the income likewise con tinues uninterrupted throughout the year although it is, of course, much smaller. The same is true of Social Security Income.

Bus Stop

Before gas rationing Crawford and West Jefferson Avenues was a DSR bus stop. Now that there is an abundance of gasoline, is it possible to have this corner again made a stop for the benefit of the bus riders from the Delray Plant?

J. Aitken
Turbine Room
Delray Power Plant

This was a good suggestion. Upon investigation by Mr. Harold Dempster, of the Employment Department, it was found that the bus referred to was the north-bound Livernois bus and arrangements were made to have those buses stop on signal on Crawford Avenue, just north of Jefferson. Notices to this effect have been sent to Delray Power Plant, Construction Department, Stores Department and Research Department.

From Miami

Please ask Mr. Walker if he can have any one of the Company's steam mains extended to Miami, Florida. Right now it would sure pay off.

Edward Clark
(Construction Department, Retired)
Miami, Florida

A little cool down there, huh, Ed? Gives you a rough idea of what we've had up here this winter.

Glad to hear from you. Those heating plants you used to work on are still going strong.

Telephone Directory

How about making a new set of Company telephone books? The old ones are overloaded with corrections.

John P. Krug
735 General Offices

This is under way and the new directory will be out in a month or two. It is not a matter that is neglected but a new issue costs time and money, which must be balanced against a little inconvenience.

Certainly

If a woman employe leaves at the age of 45, after 15 years of service, for the expressed purpose of marriage, can she get an early retirement allowance?

Unsigned

The booklet describing the Plan clearly states that an employe having fifteen years of service after age 30 is entitled to an allowance. The reason for leaving does not enter into the matter.

SOMETHING DIFFERENT

Perhaps it will be a small relief to have something other than a gripe for your column. I'm just one of the minor office workers but I like my job, I like my boss and I LIKE DETROIT EDISON. We Edison employes have a lot of things to be thankful for—and I do mean it.

Another Anonymous

—and I didn't write this myself. J. H. W.

SYNCHROSCOPE, 350 General Offices—Here is a question that I would like answered by Mr. Walker in Synchroscope.

The question should be of general interest. Questions not of general interest should be referred to one's immediate supervisor.

How is it that not all floors receive music over the PA system?

PARKING LOTS AGAIN

Are the Company parking lots intended for saving the so-called "Big Shots" from paying 15c a day? Why can't the "Little Guy" get a permit? Most of the cars left in the Company lots are not removed until the person leaves for the day.

(Unsigned)

To the first question, no. To the second question, he can if he qualifies according to the rules stated in last month's Question Box. Then it was explained that the parking lots are intended primarily for those who need their cars for Company work. In addition, employes having 30 or more years of service and who regularly drive to work are given parking tags upon recommendation by their department heads. The fact that a car often stays in the lot all day does not necessarily mean that it is not needed for Company work.

The administration of these parking lots is an awful headache and we are looking for the man who will guarantee to give us a set of rules that will satisfy everyone and still accomplish the primary purpose of the lots.

RETIREMENT AGE

Why doesn't the Company have the retirement age for women at 60 years old instead of 65? Most of the women employes do not wish to work until they are 65 but otherwise would not get the full pension allowance.

(Unsigned)

The same proposal has been made for the retirement age for men. It would certainly be fine if everybody could retire at 60 if they wanted to but it just isn't in the cards financially.

Remember, also, that our Retirement Plan is intended to supplement Social Security, and that doesn't begin until age 65.

Elevators to the Basement

Several years ago when the elevators in General Offices did not run to the basement the service was much faster. If the service is to be still further reduced by repairs to the elevators, couldn't this be tried again? We installed an expensive stairway to make the trip unnecessary.

M. A. Barbour

When the stairway was built the elevator service to the basement was discontinued. It soon became evident, however, that there are a number of us old ducks (you wouldn't appreciate this, Maurice) who have difficulty negotiating even one flight of stairs. There seemed to be so many people in this category that service to the basement was resumed. It may be that we shall have to discontinue it during the repair period.

NYLONS FOR UNFORTUNATE MEN

In regard to nylon waiting line published in June Synchroscope, I would like to know why male employes are not entitled to cards to get nylon hose for their wives or sweethearts which could be used as a gift or surprise for her. Please help the unfortunate men.

(Inquisitive)

The method by which such cards were distributed was prescribed by the merchant selling the stockings. In each case, the Company endeavored to get cards for every employe, male or female, but was unsuccessful.

Income Tax and Car Rental

The only reason many employes make a complicated income tax report is because they rent their car to the Company. There isn't supposed to be any profit to the employe at the present rate; why couldn't the Company report this cost as an operation expense?

H. B. Walters
Farmington Office

While it is true that the Rental Plan is not intended to produce any large profit to the employe, it would be rare indeed if the amount of the rental paid to an employe in any given year were to exactly equal the cost of operation in that year. The automobile rental formula is based on ownership of a car over a period of years. Income Tax figures are supposed to be exact wherever possible and not rough estimates.

Automobiles

Can new employes with less than a year of service purchase a new car through the Company for Company business? It is necessary for me, as a Relief Girl, to have dependable transportation.

(Unsigned)

As everyone knows, the automobile purchase situation is easing up somewhat. If you will get in touch with your Department Representative who deals with the Purchasing Department on such matters, as explained in this column in January, and give him all the facts, the Purchasing Department will do what it can.

You understand, of course, that the Company was able to get *preferential* treatment only for those drivers who have to use their cars on actual Company business.

box it has never been a requirement that questions or comments be signed.

General Tone of Questions. As we naturally expected, many of the questions and comments are of a highly critical nature. In fact, many of the "questions" are simply complaints, usually beginning with "Why . . ." However, critical though they often are, the general tone is certainly not bitter. Many comments state or imply "I like to work here but . . ."; and there is an occasional letter decrying the criticisms of other employees.

Answers. The greatest possible degree of forthrightness in answering such questions is most important. If the answer is "no," it is better to say "no" with a frank explanation than to walk around the point or to say that the matter is "under study." Employees can see through the most adroit double talk which could be written. Furthermore, the basic purpose of such a project is to get frank questions and to give frank answers and, unless that spirit can prevail without exception, a question box should never be started.

Another important consideration is that the answers must be technically accurate. Many of the questions pertain to highly technical points in such matters as pay practices and, unless they are answered so as to interpret correctly the company's established rules, the results can be serious.

The Detroit Edison Company has unions representing most of the manual workers. Frequently a question is submitted or a criticism made about some point which is in the area of collective bargaining. In such cases it is important that the answer be so worded as not to constitute an interference with the collective bargaining process. For example, if an employee, obviously in a group represented by a union, asks why the wage rate for his job is less than that for some other job, the best answer—and the only proper answer—is to tell him that he should discuss the matter with his union officers with whom the wage rate was negotiated.

The general tone of the replies in a question box is a matter for careful study. In our company relationships, relationships have always been somewhat informal and the question box provides an opportunity to further that idea. A deliberate attempt is made to phrase the answers in conversational language, to make them simple and lucid, and, at times and on appropriate subjects, to inject a light touch.

Not every question is necessarily printed. A few contain criticisms of fellow employees and, because those can be the makings of bitterness, they are eliminated. Others are so vague and ill founded as to be either unanswerable or simply confusing. Still others pertain to purely departmental operations and are not of enough general interest to warrant space in the magazine. Where practicable, all such questions are briefly referred to but not printed or answered. If the employee has signed his name, a direct personal answer is sometimes made. However, all but a small percentage of the questions received have been printed and answered.

Care must be taken, of course, that the question box does not operate to weaken the line organization. Department heads are consulted on questions that pertain to their departments, and it is frequently appropriate to advise the questioner that he take his point up

with his immediate supervisor. If such questions are properly handled the line organization is strengthened rather than weakened; and supervisors perhaps become more alert to their responsibilities.

Results. Naturally the results of this undertaking are not capable of direct measurement. Its worth-whileness can be judged only indirectly. One test is reader interest, and, in a magazine which was already highly popular and thoroughly read by most of our employees, the question box ranks high in reader interest among the various features of the publication. There is also much comment about it and many bits of evidence to indicate that it is filling an important need as a channel of communication between the employee and management.

But. . . . Those who might conceivably be interested in inaugurating such a plan in their own company would do well to weigh its probable results. In this company it was superimposed upon a far from hostile employee relationship.

In another kind of atmosphere, a different result might be experienced.

And, finally, no such plan should be undertaken unless someone highly placed in the organization is willing to devote careful thought and a not inconsiderable amount of time and effort to the job.

Reselling a Successful Product

". . . we must demonstrate by clear, irrefutable performance that this country's decision to return to a free enterprise economy after the war was the right decision. This means, of course, that we must make our system work as it has never worked before; we must produce as we never produced before and we must produce so efficiently that reduced costs will be promptly followed, not next year but this year, by an orderly decline in prices. High production means high employment, and declining prices under these conditions mean a rising standard of living.

"The second thing we must do is to sell free enterprise just as we would our finest product. We must lift the level of understanding both at home and abroad of what the free enterprise system is, what it is not, and how it benefits the people who live under it.

"We must somehow get these elementary truths across, not only to the people of other lands but to millions here at home who do not understand it, if we are to generate a powerful demand and desire for its retention. To do this the simple elements of free enterprise and the actual human benefits it has brought must be described simply and briefly in words all of us can understand. For this purpose the complicated parlance of the economist and technician just won't do."

—PHILIP D. REED,
Chairman of the Board, General Electric Company.

Rate Regulation *v.* Wage Regulation

A review of regulatory decisions of the state commissions to date, passing on the question of wage and salary expenses of utility companies.

BY ARNOLD HAINES*

On several different occasions, during the past couple of postwar years of troubled labor relations, the wage demands of public utility employees have become a factor, if not an issue, in the regulatory process of fixing rates for public utility customers. These discussions have revolved around two converse propositions: (1) Should the wage demands of utility employees influence the determination of rates for utility consumers? (2) Should the regulatory authorities, in fixing rates for utility consumers, presume to pass upon the reasonableness of wages or salaries for utility employees?

So far, these discussions have not brought about any specific open conflict within the regulatory forum. But enough has been said and revealed in these discussions to show that there is very definitely the possibility of such an issue being joined in the future. In other words, we have here in the making a prime question of regulatory policy which is becoming increasingly pressing during this era of generally disturbed labor disputes. Whether it is settled one way or the other (*i.e.,* in favor of either employee or consumer) or whether it is settled at all, will probably be decided in the individual states.

The recent telephone strike gave us a concrete example as to just how this conflict might arise. The National Federation of Telephone Workers (NFTW), in conducting the strike, came to the conclusion, about mid-April, that the Bell system telephone companies might be more disposed to meet or negotiate on the telephone union demands for increased wages if the utility companies had some reasonable assurance that they could get, from the regulatory authorities, any necessary rate adjustments needed to offset increased payroll expenses. There

* Professional writer of business articles, Washington, D. C.

could be little quarrel with the soundness of such conclusion as far as it went. But the president of the NFTW, Joseph A. Bierne, went a step further. He undertook to write letters to various public service commissions, asking them to consider this proposition; namely, giving the telephone companies assurance that wage increases might be offset by necessary rate increases. One regulatory commission — the District of Columbia Public Utilities Commission—turned the request down flat, but without official comment.

Not so the state of Missouri. There, two letters were received from Mr. Bierne—one to the state public service commission and another to the state governor, Phil M. Donnelly. The letter to Governor Donnelly suggested that he use his good offices as the chief executive of the state, to persuade the Missouri Public Service Commission to give sympathetic treatment to the necessary telephone rate increase applications.

The governor, somewhat in a spirit of indignation, released to the press on April 19, 1947, the text of his retort to Mr. Bierne. It was in part:

> I am amazed that either of these letters should have been written. . . . In effect you ask that a quasi judicial body approve rate increases in advance of any formal hearing. This would be highly irregular procedure. . . . In your letter to me you request that I bring pressure to bear upon the commission. . . . Your letter indicates a total disregard for the position and responsibility of the public service commission and the governor of this state. The calling of this strike itself is an irresponsible action.
>
> In a message delivered before a joint session of the 64th General Assembly of Missouri on Tuesday, April 15, 1947, I said:
>
> "Let us not lose sight of the fact that a public utility operates under a franchise or certificate issued by the state. Our statutes clearly define the obligations and duties of a public utility and provide that such a utility must not suspend its services. The utility is subject to severe penalties, even extending to loss of franchise for violation of this statutory requirement. A work stoppage or strike in such a utility therefore has the effect of nullifying the statutes of Missouri, and challenges the sovereignty of the state. If a utility company cannot disregard the public welfare, neither should its employees.
>
> "The same yardstick of public service should apply to the employees as to the utility itself. A walkout of the nature of the telephone strike can be regarded, therefore, as a strike against the state itself. Thus, we have a minority group, acting under the orders and leadership of men who have no responsibility conferred upon them by the people, making decisions and dictating policies which abrogate the laws and make mockery of the legislative acts of the elected representatives of the people."
>
> In view of that statement, I ask that you, as president of the National Federation of Telephone Workers, order these employees back to their jobs in the state of Missouri. The public welfare is involved in this matter, and after the employees have returned to work and telephone service has been resumed it will be time to talk about wage increases and their effect upon the rates which the public must pay for telephone service in this state.

We can see here that Governor Donnelly has raised the collateral question of executive interference with the function of a quasi judicial tribunal. This is hardly a new question. In fact, it is one of those administrative hot potatoes which bobs up every so often in the relations between executive branches and regulatory agencies of government.

FORMER President Hoover burned his fingers on it, somewhat, back in the early Thirties—when some well-intended advice, which he passed along to the Interstate Commerce Commission, regarding a pending railroad rate matter, was criticized in some quarters as an attempt to influence the commission. It's a fair question whether Mr. Hoover had any such intention in mind at the time, but it's an example of how carefully an executive has to steer around this particular issue.

The late President Roosevelt had his

taste of the same difficulty when he attempted to fire the late Commissioner Humphreys from the Federal Trade Commission, because of a difference of opinion on regulatory policy. It took a United States Supreme Court decision to straighten out the late President on this proposition. Governor Donnelly doubtless had these and other precedents in mind when he reacted so gingerly to the very thought of telling the Missouri Public Service Commission how to carry out its statutory duties.

But coming back to the problem of Rate Regulation *versus* Wage Regulation, on its merits, we saw another interesting example of how this issue might develop in the case of the Consolidated Edison Company of New York city before the New York Public Service Commission in October, 1946.

The purpose of this proceeding was to determine whether the commission should order a reduction in the utility company's rates. One of the witnesses for the company was Herman E. Cooper, counsel for the Brotherhood of the Consolidated Edison Employees, an affiliate of the Utility Workers' Union (CIO).

MR. COOPER urged the New York commission not to take any action by way of rate reduction that would make it impossible for the company to meet workers' "just demands." He served notice that wage increases totaling $16,000,000 a year would be sought by the 25,000 unionized employees of the Consolidated Edison system in subsequent contract negotiations. Cooper said his union would not want to see a "duplication of the Pittsburgh power strike"; but he warned that the members might vote such action if they became dissatisfied with the program of the wage negotiations.

Mr. Cooper said the union was not opposed to a rate reduction but it did not want the Edison workers to "bear the brunt" of a reduction by having the company contend that it was unable to grant higher wages because of its lower rates.

Mr. Cooper did not make public the union's specific program, but said it would ask for a blanket pay increase to compensate for increased living costs and also for an equalization of Edison wages to make them comparable with those paid for similar work in the civil service, the building trades, and the New York Telephone Company.

It is not known, of course, to what extent the New York Public Service Commission was influenced by this line of testimony. It will be noted that the union official made no attempt to dictate to the commission as to what it should do about *fixing utility rates.* He did not even make any specific suggestions along this line. What he did in effect was simply to serve notice on the commission that his union was going to go out for higher wages. This left the commission to use its own judgment

¶ "DURING *the current biennial sessions of the state legislatures, several attempts were made to have the state public service commissions acquire direct jurisdiction over the fixing of utility employee wages as well as utility rates. But no legislation was finally enacted along this line."*

about fixing rates. It is probably safe to say that the commission gave considerate thought to the union official's argument.

EVEN a publicly owned utility can feel the economic pressure forced by employee demands. The city of New York, which operates its own subway system under a traditional political 5-cent fare, is at this time feeling such pressure as the result of increased wage demands by the Transport Workers Union (CIO), which has organized many, if not a majority, of the subway workers. The odd thing about this case is the union's somewhat inconsistent position. It has generally opposed any attempt to raise the subway fare to the point where New York city's subways would be more nearly self-supporting. At the same time, it does not hesitate to make demands for higher pay, for a shorter working week, an improved pension system, and other concessions. These would increase the city's operating expenses by millions of dollars. Commenting on this in an editorial, entitled "No Fare Rise, No Pay Rise," *The New York Times* stated, on May 6, 1947:

> The city's $1,031,961,755 expense budget for 1947-48 includes more than $80,000,000 chargeable to transit deficit. The city had to go into debt to finance the $18,500,000 pay rise granted to transit workers last year, and we shall be paying interest and principal on the debt for many months. The city is within a shadow of collecting all the real estate taxes it can legally take. Pay rises for other deserving city employees have been denied because the city had no money. All over town are worthy capital improvements waiting for lack of funds. The mayor himself said, when presenting his budget: "It does not provide adequately for all of the services I deem essential."
>
> In view of these facts and much other supporting evidence that could be presented, we believe that the city should not and cannot raise transit pay, or otherwise add to the labor cost of running its subways, until it raises the fare to meet that added expense. If TWU thinks it has a just case for more money, let us see union labor get behind the movement for a higher fare instead of fighting this sound business move as it has in the past.

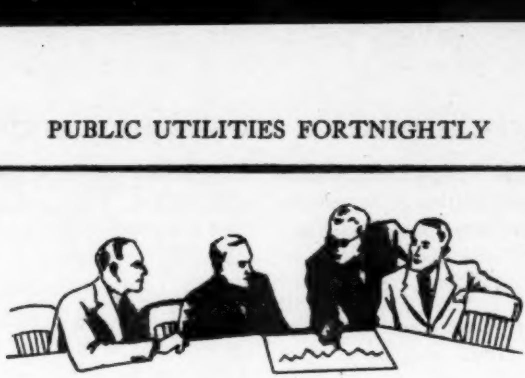
DURING the current biennial sessions of the state legislatures, several attempts were made to have the state public service commissions acquire direct jurisdiction over the fixing of utility employee wages as well as utility rates.[1]

But no legislation was finally enacted along this line. True, the Virginia statute authorized the state corporation commission—a regulatory body—to seize operating control of utility properties to prevent work stoppage. But the commission itself has no authority to fix new wages or even negotiate on that subject. The possibility that the state regulatory commission might have such authority was discussed in New Jersey and introduced as a bill in Maryland, but no final action was forthcoming.

The Missouri statute enacted this year to prevent utility strikes seems to be the more likely pattern, since it followed a somewhat similar statute in Indiana.

The new Missouri law has the effect of setting up a dual system for regulating utility rates, as well as utility service, respectively. Missouri has for some years had a public service commission to fix utility rates. That function continues undisturbed. But the new law, sought and signed by Governor Donnelly, sets up a new special state utility mediation board to control utility employee relations in the event man-

[1] See article, entitled "Should State Commissions Regulate Utility Labor Relations?" by Roscoe Ames, PUBLIC UTILITIES FORTNIGHTLY, Vol. XXXIX, No. 6, page 352, March 13, 1947.



Payroll Expenses

"PAYROLL *expenses are . . . one of the major items in the operating expense class. The commissions are somewhat more reluctant to deal with the matter of reasonableness of lower bracket wages than reasonableness of salaries of executives. They have no power to fix wages, but they undoubtedly can determine whether the wages paid constitute a reasonable operating expense."*

agement and labor cannot agree. This board of five members (two from utility management, two from utility labor and one "public" member) is appointed by the governor to investigate and take action to prevent utility work stoppage, contrary to public interest. The board itself does not have any direct compulsory arbitrary powers. But it can appoint an examining panel to make recommendations, in the event the parties to utility labor disputes cannot agree themselves. The board would also seize utility properties and operate them, in the name of the state of Missouri, to prevent a strike. Strikes, thereafter, would be punishable under the penalty clauses of the statute.

TURNING now to existing statutory authority of the public service commissions in the several states, we find an interesting situation. It would appear that the state commissions already have, in general theory, an indirect power over amounts paid by utility companies for salaries and wages. These commissions derive this authority from their over-all power to fix reasonable rates and to allow or disallow, as a proper charge against revenues received from rates, all "operating expenses" claimed by the utility company. Payroll expenses are, of course, one of the major items in the operating expense class.

The commissions are somewhat more reluctant to deal with the matter of reasonableness of lower bracket wages than reasonableness of salaries of executives. They have no power to fix wages, but they undoubtedly can determine whether the wages paid constitute a reasonable operating expense.

Some interesting situations might arise. For example, a utility company which is limited to a reasonable return might find it was making a return sufficiently high to warrant a decrease in rates. Theoretically, it might connive with an employee union to use that excess in the payment of higher wages. A

commission, in such a case, might disallow the increase as far as customers were concerned, leaving it to be a matter between the company and its stockholders. The companies are always in a difficult position when wage increases are asked because they never know for sure what a commission may do about them, although up to date the commissions have been inclined to regard the matter as one for managerial discretion.

CHECKING back again the older cases on the point reported in *Public Utilities Reports,* we find one early Wisconsin commission case where an excessive payroll expense was criticized. This was Charlesworth *v.* Omro Electric Light Co.[2] It was therein held that unusually high wages and salaries must be considered partially as a disposition of net income, unless they result in greater efficiency and reduction of expenses in other directions.

Several New York commission cases, occurring in the early Twenties or thereabouts, show a somewhat unsettled regulatory viewpoint on this matter. In *Re* New York State Railways,[3] the New York Public Service Commission said that it would treat an award by arbitrators of wages the same as any other item of expense paid by the utility and, if exorbitant, would reduce it to a figure deemed reasonable for rate making.

On the other hand, in Breen *v.* Northern New York Utilities,[4] the commission ruled that it would not supplant the judgment of corporate directors when expenditures for salaries and other general expense, although open to criticism, are not for nominal services or diversion of earnings from the stockholders.

In *Re* Western New York & P. Traction Co.,[5] the same New York commission ruled that it should not permit, without question, an increase in rates in order to allow the payment of such wages as may be demanded by employees, but should see to it that this item, like all other items of expense, is reasonably incurred before permitting it to be loaded upon the public in the form of higher rates.

In *Re* Van Brunt Street & E. B. R. Co.,[6] the commission said that an increase in rates should not be based on prospective wage increases, especially where the increase is made contingent upon an increase in rates.

ELSEWHERE throughout the country, these early state commission rate cases show a reluctance to interfere in wage matters, by an insistence on ultimate control of a determination of reasonable operating expenses. In *Re* San Francisco-Oakland Terminal Railways,[7] the commission definitely adopted the policy of recognizing, as operating expenses, all increases in labor costs.

In *Re* Tri-City R. Co.,[8] the Illinois commission held that a wage increase, conditioned upon the future action of a commission, was against public policy and not to be considered by the commission as a proper basis for relief by way of increase in rates.

In an early Nevada case,[9] it was ruled

[2] PUR1915B 1.
[3] PUR1920F 545.
[4] PUR1921B 463.
[5] PUR1920A 951.
[6] (NY) PUR1919E 723.
[7] (Cal) PUR1920A 115.
[8] PUR1919E 836.
[9] Public Service Commission *v.* Nevada Northern R. Co. PUR 1919F 334.

that the commission has power to require a utility to increase operating expenses to provide for an increase in wages necessary to procure employees sufficient to render adequate service, where the labor cost is not excessive compared with other cost standards and the increase will not be reflected in unreasonable rates.

In Havre de Grace & P. Bridge Co. *v.* Towers,[10] the Maryland Court of Appeals reversed a decision of the Maryland Public Service Commission which attempted to cut toll rates of a bridge utility. Among other errors of the commission, which the court reversed, was an attempt to treat a portion of salaries as an improper charge against income. The opinion of the court by Justice Stockbridge stated in part:

> While the order is silent upon the question of the payment of certain salaries, it is clear from the opinion filed by the public service commission, and upon which its order is based, that the commission intended in effect to limit the amount of salaries to be paid to certain officials of the bridge company. It is true that the opinion does not say that these officers shall not receive any greater compensation than that referred to in the opinion, but intimates that, if a higher compensation is paid to them, it cannot be regarded as a proper charge against the receipts of the bridge company, but should be paid apparently by the individual stockholders. Inasmuch as the services for which the salaries are paid are to be rendered to the corporation, as a corporation, it is hard to understand why the salaries for the performance of the services should not be paid by the corporation. Indirectly, of course, the question of salaries enters into the question of rate making, since the larger the aggregate amount of salaries paid, the less will be the net revenue derived from tolls, applicable to dividends for the stockholders. Therefore, in this regard, the public service commission by its order undertook by indirection to direct the financial management of the company.

THE Virginia commission held in *Re* Clifton Forge Mut. Teleph. Co.[11] that, while it could not pass on salary questions as between stockholders and officers, it did have the duty of scrutinizing salary increases, which the public might have to pay in the form of increased rates.

Approaching the problem from the opposite direction was an early Indiana case, *Re* Indianapolis Traction & Terminal Co. [12] Here the Indiana commission ruled that it could make an increase a condition of an order granting emergency relief to utility companies. This, notwithstanding the fact that a commission has no power directly to compel an increase in the service of employees.

In an early Utah case, an award of a board of arbitration granting an increase in wages, which was stipulated by the attorneys for the parties to a rate proceeding to be taken into consideration by the commission without further evidence, compelled the commission to add the amount of increased wages to operating expenses. *Re* Utah Light & Traction Co.[13]

Among the more recent decisions of

[10] 132 Md 16, PUR1918D 484.

[11] PUR1920C 252.

[12] PUR1919A 278.

[13] PUR1920E 833.

> "THE *companies are always in a difficult position when wage increases are asked because they never know for sure what a commission may do about them, although up to date the commissions have been inclined to regard the matter as one for managerial discretion.*"

the state commissions on this general subject was a case in Syracuse, New York, during World War II, *Re* Syracuse Transit Corp.[14] The Syracuse Transit Company and the Amalgamated Association of Street and Electric Railway and Motor Coach Employees of America had in effect a bonus plan as approved by the War Labor Board and the Director of Economic Stabilization. A bonus plan had been under discussion since June, 1944, with the War Labor Board in Washington, and the second region of the National War Labor Board in New York city. The present bonus had been approved in September, 1944, for the period May 1, 1944, to May 1, 1945.

This bonus attempted to compensate the company employees for increased and unusual wartime work load. It was based on a formula involving vehicle miles, increased revenue, and the Little Steel formula.

The commission did not question that employees should receive this additional compensation. The bonus plan had been approved by the National War Labor Board on the condition that the company would not use this bonus for an application for a rate increase or to resist an otherwise justifiable rate decrease. Counsel for the union stated that the condition applied only to the company and would not apply to the union. There was testimony that a reduction in charge for token fares would result in a reduction in bonus payments to employees. The commission said:

> Rate reductions should not be used as a basis for reducing the compensation paid to employees. As has already been shown, this matter is complicated by the contract between the company and the union. However, this is a matter for the union and the company to work out with the national agencies. Quite obviously this commission cannot become involved in any wage agreements or negotiations with the War Labor Board, nor be restricted in applying the standard fixed by law for reasonable rates. It is not reasonable that an arbitrary formula for computing the additional compensation should be used to prevent a just reduction in rates of fare paid by the public.
>
> I am allowing herein as an operating expense the full cost of the bonus estimated by the company's comptroller. . . .

During the depression of the early Thirties, the South Carolina commission made an interesting ruling along this line, in *Re* Southern Bell Teleph. & Teleg. Co.[15] There the telephone company had failed to reduce wages and salaries of employees during a period of economic depression when wage cuts throughout the country had been made in other industries from 10 per cent to 50 per cent. This was held to be unjustified, and the future allowance in operating expenses for such wages and salaries was ordered to be reduced by not less than 20 per cent.

The Pennsylvania commission held that it had no power to determine the conditions upon which a street railway's striking employees should return to work, nor did it have jurisdiction in disputes over wages or terms of employment in public utility operations.[16]

The Washington state commission in Department of Public Service *v.* Pacific Power & Light Co.[17] took into consideration the pressure being put upon a utility company to restore wage cuts made during the economic depression. The commission said that such a movement might well be justified and that, if wage increases were granted, they

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[14] (NY1945) 59 PUR(NS) 170.

[15] PUR1933B 181.

[16] Citizens Committee of Summit Hill *v.* East Penn Electric Co. PUR1928E 288.

[17] 13 PUR(NS) 187.

would be charged to operating expenses.

The commission took this into account in determining whether rate reductions should be made to the full amount of the excess profits indicated in a utility company earnings.

A U. S. District Court (Pennsylvania) in Edison Light & P. Co. *v.* Driscoll[18] ruled that higher salaries to be paid to officers and employees pursuant to a resolution by the board of directors, if reasonable, should be allowed, since a commission may regulate but may not manage a utility. It is not empowered to substitute its judgment for that of the directors of the corporation.

To the same effect, another U. S. District Court (Florida) ruled, in passing upon the adequacy of rates fixed by a franchise, that it should not rule upon a city's claim of excessive wages and salaries, where there was no evidence of bad faith or dishonesty and the experts themselves did not agree.[19]

Prospective wage increases contingent upon a rate increase were considered by the Washington state commission in estimating operating expenses of a bus company.[20]

[18] (1938) 25 PUR(NS) 441, 25 F Supp 192.

[19] West Palm Beach Water Co. *v.* West Palm Beach (US Dist Ct) PUR1930A 177.

[20] Department of Public Service *v.* Everett City Lines, Cause No. FH-7619, Nov. 6, 1942.

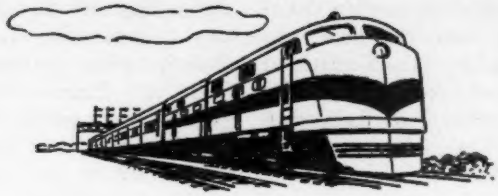
Fruit of Free Enterprise

"W*HAT is happening in the coal industries in the United States and in England emphasizes the contrast in our two approaches to a very similar problem. The coal industry, as you know, has been sick for a long time in both countries. England has attemped to cure it by nationalizing the mines. America, even in a period of labor crises, has clung tenaciously to the system of private ownership.*

"Just a few weeks ago we saw our belief in this system justified. The Pittsburgh Consolidation Coal Company, largest privately owned coal company in the world, announced its plans for conversion of coal into gas, alcohol, and other more efficient fuels.

"This privately owned enterprise thus was driven by the profit motive in a free competitive system to launch the greatest single advance in the entire history of the coal industry."

—GWILYM A. PRICE,
President, Westinghouse Electric Corporation.



Britain's Problem of Transport Nationalization

Britain's need for nationalization of its transport facilities was apparently the outgrowth of inadequate regulation of competitive transport services under private enterprise. The legislation is based on the theory that services to the community without profit incentive will be more successful in maintaining and improving transport operations. But will this theory prove out in practice? This writer expresses some scepticism.

By HERBERT T. BANYARD*

In the last hundred years few of the industrial undertakings of Great Britain have taken up so much parliamentary time as the railways. At the time of their inception and development they were regarded as monopolies and as such were subjected to varying degrees of statutory control. In return for passing the enabling acts necessary for their existence, the legislature insisted that reasonable facilities must be offered to the trading community for the conveyance of goods, prohibiting oppressive contracts, and imposing restrictive conditions on charges. In the Nineteenth Century a thousand odd of these controlling acts found their way into the statute book. The recent allocation of more parliamentary time for the consideration of the Transport Bill merely continues the tradition.

Seldom has the opposition to such a measure been conducted with so much ferocity. This is not surprising, for the bill with its 127 clauses and 13 schedules provides the legal basis for a publicly owned system of Britain's inland transport. It will extend nationalization with few exceptions to all railways and their ancillary undertakings: goods, passenger transport, canals, docks, and harbors. At the present time, these undertakings employ about a million people, approximately 6 per cent of Britain's working population. The sum of £1,000,000,000 ($4,000,000,000) will be required to compensate the existing rail and canal stockholders. An undetermined amount will also have to be found for the compensation of the road hauliers who will be absorbed under the Transport Bill.

Its main provisions deal with the setting up of a transport commission to which would be transferred on January 1, 1948, all the acquired under-

* For personal note, see "Pages with the Editors."

takings. It would consist of a chairman and four other members who would be responsible to the Minister of Transport for matters of policy. The managerial control of the differing concerns would be shared by five executives dealing respectively with railways, docks and inland waterways, road transport, London transport, and hotels. The separation of the executive task of management from the commission should leave the latter free to confine itself to the promoting of an efficient and adequate system of inland transport and dock facilities in the United Kingdom. There is, however, a vital obligation laid upon the commission so to conduct the various undertakings that the revenue received "is not less than sufficient for making provision for the meeting of charges properly chargeable to revenue taking one year with another."

All road haulage concerns mainly engaged in long-distance haulage under A and B licenses will be acquired. Certain classes of operators are excluded; that is, furniture removers, carriers of liquids in bulk, meat, livestock, and heavy indivisible loads. After January 1, 1948, it will be a condition of the issue of A and B licenses that the working distance of the operatives outside the control of the commission will be limited to 25 miles from their base. In respect of goods vehicles functioning under a C license by ancillary users—that is, traders using vehicles for the carriage of goods in connection with any trade or business carried on by them—the limit of operation will be 40 miles from their base.

It is provided that permission may be granted to C license holders to operate in excess of 40 miles if it can be shown that such an operation is necessary to maintain, say, a continuous manufacturing process between two factories. Permission will also be granted if the goods of the trader are especially fragile, or in certain circumstances where the cost of packing would be prohibitive. Against the refusal of permission there lies an appeal to the Minister. In passing, it might be noted that the farming community will enjoy considerable freedom under the bill. To quote the parliamentary secretary to the Ministry of Transport: "A farmer taking his own produce in his own vehicle does not require to have a C license at all. Therefore he is able to take his own produce in his own vehicle 400 miles if he wants to without asking anyone's permission."

At the moment it is not proposed to take over road passenger transport services, but the commission is empowered to promote area schemes after consultation with the local authorities with a view to "the coördination of the passenger transport services serving the area."

Apart from the general objections advanced against the bill two specific lines of attack have emerged: (1) on the mileage restrictions imposed on the road haulier and especially those directed against the C license holder, and (2) on the terms and conditions of compensation. The consideration of the second point will be dealt with later in this article, but for a full understanding of the former it is now necessary to digress somewhat to study the effect of road competition on the railways between 1921 and 1939.

AFTER the 1914-1918 war the British government decided on the

amalgamation of the 120 companies then operating railways, and in pursuance of this object passed through Parliament the Railways Act of 1921. This had the effect of reducing the number of operating companies into four main groups. At the same time the act set up a new quasi judicial body called the Railway Rates Tribunal, vesting in it wide authority to deal with all matters of railway rates and charges. The railway companies submitted to the tribunal a system of rates and charges designed to produce revenue at the rate of £51,000,000 per annum, this figure being known as the standard revenue. After much inquiry and controversy the new rates received statutory authority, which came into force on January 1, 1928, and were known as standard charges. Publicity had to be given to these new rates, and the railway companies were compelled to keep rate books open for the inspection of any interested party at each station where goods were received for conveyance. It is interesting to note that this standard revenue was never earned in any year by the four groups, and, despite an increase of 5 per cent in their rates in 1937, they incurred each year a deficit running into many millions. The act of 1921 gave the railways power, subject to the permission of the Railway Rates Tribunal, to carry certain traffic at rates lower than the standard operating for that class of traffic. These were known as exceptional rates, and it has been computed that, in the years 1930-1938, 80 per cent of all traffic was conveyed at these rates.

The effects of these deficits were shown in the dividend policies of the companies, the junior stocks receiving little or no return during these years, while at the same time the amounts available for obsolescence and renewals were limited. This fall in revenue can be traced to two main causes: the general trade depression between the wars and the growth of road transport competition. The road haulier, free from the onerous liability of the common carrier and under no obligation to publish rates, was thus able to compete very effectively with rail transport. Road charges were and are still based on the cost of carrying, while the structure of railway rates is based on the value of the consignment as well as the cost of conveying it. As a result, road charges are less than rail charges for the more valuable goods and more than rail for the less valuable. Road hauliers therefore competed successfully for those goods which are

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found in the expensive categories of railway rates. Thus, the fact that the rates for conveyance by rail were cheaper than the equivalent rates by road meant that the low-rated commodities, like coal and iron ore, were left to the railways to carry, not because the road haulier did not desire to participate in this class of traffic but because his rates for it were not competitive. It therefore followed that any increase in the number of road hauliers would result in a further loss of remunerative traffic from rail to road.

So far as I know, no figures are available to show the amount received by the British railway companies for the conveyance of each class of traffic or the relation of the receipts to the cost of conveyance. It is not, however, unfair to suggest that the raw materials for the basic industries were in part subsidized by the higher grades of traffic. The revenue necessary for railway solvency was obtained by a delicate combination of income from all classes of traffic. The advent and growth of the road haulier, who took the most remunerative traffic and operated in the main on those routes where an adequate amount of two-way traffic could be obtained, brought the railway companies to a serious financial crisis.

To deal with the results of this free competition, so disastrous to the railways so long as their rate structure remained unmodified, the government instituted an inquiry into road and rail transport. The result of much deliberation was the production of the Salter report, the main recommendations of which were incorporated in the Road and Rail Traffic Act of 1933. This provided for the first time in this country a system of goods vehicle licensing. The act laid down that "no person shall use a goods vehicle on a road for the carriage of goods (a) for hire or reward, or (b) in connection with any trade or business carried on by him except under license." Three kinds of licenses were granted: A—road haulier, B—limited carrier, and C—ancillary user. They were granted for a period to hauliers operating at a certain date but subsequent entrance into the industry was severely limited. New applicants had to show that real need existed for the services they proposed to offer. It was not sufficient to assert that refusal to grant the license would cause inconvenience generally. At the public hearing of these new applications it was quite usual to find objections raised against the granting of the license not only on the part of the railways but also on behalf of the established haulier. Despite the limiting factors of the licensing regulations and the increased taxation of motor vehicles and fuel, the position so far as the railways were concerned deteriorated steadily.

In 1938 Britain's railways launched their "square deal" proposals, seeking relief from the statutory regulation of charges and freedom to decide for themselves the rates to be charged for the conveyance of merchandise. The advent of the war blocked any statutory relief, but, in view of the experience gained as to the effect of even regulated competition on the structure of railway finance, it is understandable that the terms of the present Transport Bill are designed to integrate both road and rail systems into a unified whole.

It is pertinent, however, to inquire if this measure will provide the flesh

Relief from Statutory Regulation

"IN 1938 Britain's railways launched their 'square deal' proposals, seeking relief from the statutory regulation of charges and freedom to decide for themselves the rates to be charged for the conveyance of merchandise. The advent of the war blocked any statutory relief, but, in view of the experience gained as to the effect of even regulated competition on the structure of railway finance, it is understandable that the terms of the present Transport Bill are designed to integrate both road and rail systems into a unified whole."

and blood of a transport system so attractive to the trading community that it will of its own volition use the services offered. Time and experience alone can answer this query. Meanwhile, there would appear to be little objection to an amendment designed to restore the freedom of the C license holder. The right "as of right" to acquire his license and to operate as many vehicles as his business requires without mileage restrictions would be a concession that should be a measure of the Minister's confidence in the ultimate success of his new undertaking.

At present, the conditions under which traders may apply for permission to operate their own vehicles beyond the prescribed limit are clearly laid down in the bill. But these concessions may be worthless if, as it appears, the bill provides that the commission can exercise what is virtually a veto by representing that the contemplated permit will affect adversely the new monopoly. In view of this situation it is not surprising that the trader operating vehicles at present under a C license considers that these safeguards are more apparent than real.

Is the Minister's objection to accepting such an amendment due to his fear that the industrial community might, by a substantial increase in the number of road vehicles, attempt to sabotage the new undertaking? If this is so, then the point might be met by a compromise whereby the concession would be limited to the 149,000 present holders and their 300,000 vehicles. Such a gesture would at least provide competition limited in nature but sufficiently adequate to become a barometer of efficiency to test the operating qualities of the state monopoly.

I turn now to the terms and conditions of compensation in the bill against which the second of the main

objections has been raised. In satisfaction for existing rail and canal stock, the commission proposes to issue British transport 2½ per cent stock based upon the market valuation operating within certain dates. The principal and interest of the stock will be guaranteed by the government. The market price chosen is that existing either six months before the last general election (July, 1945), or six days before the King's speech opening the present session of Parliament (in which the intention to nationalize transport was announced), whichever is the higher.

For the road hauliers a 2-part scheme of compensation is suggested: the replacement of the acquired assets at the time of the transfer, less depreciation on an agreed scale, and a payment based on from two to five times the net annual profit lost to the undertakings.

For local authorities operating passenger transport services to be acquired under the bill it is provided that the commission assume liability for the interest and sinking-fund charges for any net debt which is outstanding at the time of transfer. No further payment is envisaged and this method of compensation is justified by the government on the ground that the assets are merely being transferred from one public authority to another.

Considerable criticism has been directed against the whole idea of using the prevailing market prices as basis for compensation. The alternative suggested by the opposition is that the matter be submitted to an independent tribunal for arbitration, the resulting valuation then being accepted by the government as a basis for compensation. This is not quite so easy as it sounds because of the wide diversity of assets owned by the railway companies. It would certainly require the services of a considerable number of technical and professional experts for a considerable time. But, while that fact would not of itself invalidate the method, it is relevant to inquire how it is proposed to assess the present earning capacity of the railways. It would be almost impossible adequately to compute the value of, say, a branch line with all its ancillary equipment, without reference to the amount and type of traffic likely to pass during a given period. And this piece of vital information is at the moment a very open question.

At least this can be maintained: The existing stockholders will suffer no loss of capital and the market price is in many instances substantially higher than before the war owing to the guaranteed revenue paid by the government during the war years. Two examples can be cited to support this statement: The Great Western Railway ordinary stock which stands at the moment in the market at £59-60 could be purchased in January, 1939, for £28, while the London, Midland, and Scottish Railway ordinaries' present-day value is £29-30, which in 1939 stood at £13-14.

The other aspect of the proposed method of compensation is the loss of income entailed. It is estimated that this income will fall from £40,000,000 to £22,750,000 per annum. It has never been seriously questioned that the state has not the right to benefit from the use of its own credit, or that the drop in income is inevitable when once the

principle is accepted that this new stock carries a government guaranty, and therefore is secure against any default. And sufficient attention has not, I think, been given to the fact that the present rate of income enjoyed by railway stockholders has only been possible by the inflated traffic of the war years.

This volume of traffic clearly could not continue. Indeed, already a substantial fall has occurred and it is a matter of considerable doubt, even if more severe restrictions were placed on road transport in favor of the railways, whether the latter could earn anything approaching the present guaranteed revenue. The obvious remedy for holders of the new stock who dislike the reduction in their income is to sell and invest in another type of security which, while providing a higher yield, carries a greater amount of risk. The reinvestment problem of the holders of debenture stock, which ranks as trustee securities, is not quite so simple. For them, however, the Chancellor of the Exchequer states that he is prepared to consider some increase in the range of trustee stocks. This would go a long way towards removing what might be considered a legitimate grievance in these compensation proposals.

Two final points in connection with this section of the bill deserve attention. Much criticism has been directed against the suggested terms for acquiring the good will of the road haulage undertakings and charges of robbery and parsimony have been leveled against the government. The prevailing commercial practice when dealing with good will in the sale of a concern operating under an A license is to assess it at a figure varying between £45 and £55 per ton of unladen weight. Judged by this figure the proposals of the bill err if anything on the generous side.

SECONDLY, in acquiring municipal passenger undertakings the commission, while taking over their debts, will also acquire the benefit of any existing redemption funds. But no provision appears to be made for any extra compensation to the particularly remunerative undertakings. Many local authorities, owing to prudent management over a period of years, have redeemed the whole of the outstanding debt on their passenger-carrying fleet and at the same time out of income have brought their assets up to first-class condition. The subsequent profits have then been available for lower fares and the relief of the general rates. The Glasgow Corporation has an excellent record in this respect and, in company with many similarly placed local authorities, deserves more generous financial treatment than the bill proposes.

To provide funds for capital purposes for the future development of its assets, the commission is empow-

¶ "THE *Great Western Railway ordinary stock which stands at the moment in the market at £59-60 could be purchased in January, 1939, for £28, while the London, Midland, and Scottish Railway ordinaries' present-day value is £29-30, which in 1939 stood at £13-14.*"

ered, under the terms of the bill, to create and issue additional transport stock amounting to £250,000,000 and to raise temporary loans not exceeding £25,000,000. Judged by any criterion, these figures appear inadequate. For example, to electrify the remaining suburban services of the London area now operated by steam traction would, it has been estimated, cost £300,000,000. And it is doubtful if a similar amount would be sufficient to effect the modernization of our existing railway equipment. It is hoped these facts will not be lost sight of when the committee stage of the bill is reached and that amendments will be accepted to enable the commission to deal with the arrears of development in our transport systems.

When commending this measure to the House of Commons on December 18, 1946, the parliamentary secretary to the Ministry of Transport concluded his speech with these words:

> The bill frees our vital transport industry from the sordid wrangles that have bedeviled it in the past, and creates a sound structure, on which a healthy and progressive transport system can be built, the pride of all who work on it and a vital instrument in planning the reconstruction of our country on new and better foundations.

THIS belief in the benefits and efficacy of nationalization by the Labor party is no new thing. For the last half-century it has held, with all the tenacity of a religious faith, a conviction that the major public services and large concentrations of economic power should not be left in private hands. To expect it now to recant this belief when, for the first time in its history, it has the power to translate it into legislation, is as reasonable as to expect the College of Cardinals to repudiate the infallibility of the Pope.

Whether the hopes of the parliamentary secretary are realized will depend not only on the quality of those appointed to executive positions, but also on the attitude of the rank and file toward their new employers. For many years sections of Britain's industrial community have been very vocal about the iniquity of private profit as the motive force in industry, and have denied vehemently the argument of their opponents that it is vital for the successful operation of any undertaking. This bill provides the transport worker with the opportunity of proving, at least in part, the truth of this contention. Has the evolution of our social consciousness reached the stage where it can be assumed that service to the community will of itself be regarded as of major importance? I must confess to some doubt in the matter; nevertheless, the passage of this bill into a smoothly working act very largely will depend on how far that ideal is accepted.

"WHILE we are cautioned not to be too optimistic at once about the use of atomic energy in industry and in everyday living, as it is not ready to compete with the present sources of power used by our industrial society, nevertheless this great cheap source of power may be a welcomed supplement in certain phases of our industrial life where huge blocks of cheap power are required.

"Naturally I think of atomic energy as supplemental to hydroelectric power in the West, where there is a need for electric power, even greater than all the existing hydroelectric plants can supply."

—ABE MURDOCK,
U. S. Senator from Utah.

OUT OF THE MAIL BAG

More on Depreciation

THE May 22, 1947, issue of the FORTNIGHTLY contains an interesting and scholarly discussion of some "Live Depreciation Questions" by Clyde Olin Fisher, then chairman of the Connecticut Public Utilities Commission, but since retired. Many engineers, familiar with the history of utility depreciation, will disagree with one of his positive assertions which reads as follows: "Obviously, the consumption of plant is no more a function of earnings than it is a function of debt amortization or the outcome of the Irish Sweepstakes or the vagaries of the vernal equinox."

It is assumed that "consumption of plant" is intended to be synonymous with accruing depreciation. This phenonomen is commonly divided into two rather distinct classes, called physical and functional, respectively. The latter class has accounted for more than 80 per cent of past retirements, and this proportion will probably be maintained. A very large proportion of such retirements is due to inadequacy, which means that units become too small to handle increasing loads, although they are in satisfactory physical condition. Such increasing loads are reflected in increased revenues.

IT follows that, contrary to the Fisher assertion, there is a relation between revenue trends and the progress of depreciation. Whether one is a "function" of the other need not be argued nor the difference for "Irish Sweepstakes" and "vernal equinox." Where a business (and revenue) decline occurs the opposite effect on depreciation takes place. Units last longer and, for the time being, accruing depreciation declines. It is the writer's opinion, as set forth at greater length in his recently published *Anatomy of Depreciation*, that business trends, as reflected by revenues, are a very important factor in depreciation computations. They indicate that the earlier depreciation methods, under which accruals were based largely on revenues, were by no means without merit. Present accruals for depreciation are not very different from those made in those earlier years by progressive companies for anticipated retirements.

This is not an argument for return to retirement accounting methods but rather that present methods should not ignore factors that have been found by experience to be important, where an "enlightened estimate" is the objective.

—LUTHER R. NASH,
Consulting Engineer, Ridgefield, Connecticut.

TVA and Generation

THE comments made recently in your pages about TVA et al. are most pertinent. Just how any person having the most elementary business acumen can be literally "kidded" into thinking seriously that a project including some $700,000,000 investment with an annual gross of less than $50,000,000 can have a surplus of the order of $16,000,000 indicates almost "atomic" legerdemain the "yardstick" is not even a micrometer rule.

Incidentally the comments about high voltage generators are quite true. In South Africa and Great Britain the Parsons Company has had over ten 33,000-volt units in operation, beginning in 1929. (See *Journal*, Institute of Electrical Engineering, page 1065 (1929).) The writer's investigation was in 1936. There are of course other reasons why "high voltage generation" is not always an economic desirability.

—C. O. DODGE,
Resident, Brooklyn, New York.

Utility Stock Performance

I AM interested in the St. Louis County Water Company, the Long Island Water Company, and a number of others, and, consequently, have come to get great pleasure and information in reading your publication.

Sometime ago I read in "Pages with the Editors" an appraisal of reasons behind the weak market for utility stocks. This is an excellent article and true as far as it goes. For, while it is true that stocks have dropped because of disappointment in earnings and lack of confidence on the part of investors, the reason for lack of earnings and lack of confidence is due to realization of the fact that it is labor and not management that controls things. In other words, it is the labor situation that fundamentally caused the slump on the stock exchange.

—C. S. MOTT,
President, Charles Stewart Mott Foundation.

Washington and the Utilities

Merry-go-round on Power Bills

CONGRESSIONAL activity in Washington on bills of interest to the public utility industries reached a dizzy pace late in June. Six different congressional committees were considering bills of one kind or another, principally those dealing with public power operation.

Moreover, the testimony before some of these committees and subcommittees was not entirely consistent. For example, one subcommittee of the House Public Works Committee, considering the Dondero Bill (HR 3036) to switch certain public power project control from the Interior to the Army, witnessed testimony of business-managed utility men praising the Army Engineers. Another subcommittee of the same committee heard business-managed utility men condemn the Army Engineers for their insistence on building Clark Hill dam on the Savannah river in Georgia.

Again, the Federal Power Commission received bouquets at the Dondero Bill hearings as better qualified to supervise Federal power marketing operations than the Interior Department. But over at the House Interstate and Foreign Commerce Committee the FPC was being criticized for alleged overreaching of jurisdictional ambitions in both the electric power and natural gas fields. This criticism came, of course, in connection with the Miller bills to cut back FPC control over certain border-line interstate sales and hydroelectric activities, and the Rizley Bill to cut back the FPC's control over production and gathering under the Natural Gas Act.

Meantime, the Appropriations committees of both the Senate and House were hacking away at proposed budgets for both Interior and Army Engineers.

Decision Boosts Rizley Bill

THE Rizley Bill, incidentally, received a shot in the arm as the result of the U. S. Supreme Court decision in the Interstate Natural Gas Case. The unanimous opinion of the highest court, written by Chief Justice Vinson, was so sweeping that it apparently surprised even the FPC officials, whose position was upheld on all points and then some. Judge Vinson ruled, in effect, that any sale of gas, however intrastate in character its own physical circumstances might be, nevertheless would be subject to the FPC's control, if the gas delivered within the state were generally known to be designed for resale outside of the state. (See page 125.)

Whether there was any corporate relationship between the wholesale supplier and the pipe-line company buying the gas did not seem to make much difference. The court simply regarded the sale and delivery of the gas within the state as part of a continuous movement in interstate commerce and hence subject to Federal control.

Even the boosting of pressure in compressors was found to be merely an "incident" of the interstate journey.

Both oil and natural gas men see in this Interstate Natural Gas decision authority for FPC to extend its control right back to the head of the well. This notwithstanding the exemption under the Natural Gas Act for producers and gatherers of natural gas. The Vinson opinion held on this point that the statutory exemption is simply a reservation of state power not available for use by a company seeking to claim such exemption on its own hook. (In the Interstate Natural Gas Case the state of Louisiana did not complain of FPC interference.)

As a matter of fact, the FPC itself voluntarily announced a proposed new rule defining "producers and gatherers," which, in effect, waived part of the extensive jurisdictional powers which the Vinson opinion implied FPC could exercise. This was several days before the decision was handed down. However, Chairman Smith, evidently sensing that the Interstate Gas decision would "needle" the oil and gas people into anguished complaint, hastened before the House Interstate and Foreign Commerce Committee and laid down an FPC compromise on the Rizley Bill. This compromise declared that FPC would exercise no control over production-gathering activities of independent natural gas producers, including those oil producers who also produce some gas. (The FPC proposal said nothing, however, about end-use rate making, which the Rizley Bill also seeks to prohibit.)

Thus we have the rather unusual spectacle of a Federal agency voluntarily favoring a partial limitation of its powers almost while the ink was still wet on a Supreme Court decision upholding such powers on a broad and sweeping basis. It remains to be seen whether Chairman Smith has succeeded in putting out the fire which the oil and gas people have been trying to build under the Rizley Bill. Certainly the immediate reaction of Congress to the whole situation was one of delay. Even members known to be favorable to the Rizley Bill wanted to take a second look at the Interstate Gas decision, if for no other reason than to see if the Rizley Bill plugged up all the necessary gaps which the Vinson opinion disclosed in the present Natural Gas Act.

That being the case, there was some doubt if the House would have an opportunity to vote on either the Rizley Bill or the FPC compromise before the end of the session scheduled for late July. Just the same, pressure under the Rizley Bill is still climbing and, whatever Congress may do before it goes home for the summer, the chances are pretty good that it will not cool off completely on this subject by the time the next session meets in January (assuming no special session). In other words, some action by the 80th Congress on amending the Natural Gas Act eventually is a good prospect, clouded only by the definite threat of another one of those Truman vetoes.

Reclamation Reform Bill Reaches First Base

The perennial bill to make the Reclamation Bureau cease its ingenious practice of paying interest and having it too, has made some progress. But that is about as far as it is likely to go at this session of Congress. This year the bill (HR 2873) is known as the Rockwell Bill. After much pulling and hauling a subcommittee of the House Public Lands Committee has favorably reported the Rockwell Bill in a form satisfactory to the National Reclamation Association and quite unsatisfactory to the Reclamation Bureau. This bill requires that interest in the power features of any reclamation project shall be paid over directly to the Treasury, and shall not be diverted by the Reclamation Bureau to repayment of other costs of the same project. Up to now, Bureau accountants have been using power interest payments to amortize irrigation costs, and have otherwise used the interest money to pay part of the principal of the project debt. House appropriators objected to this practice, and had threatened to cut Reclamation funds until it was stopped. The bill reduces the interest rate from 3 per cent to 2 per cent, and requires that power costs be fully amortized within sixty-seven years, instead of "within a reasonable time."

But the favorable subcommittee report only represents reaching first base as far as the Rockwell Bill is concerned, and with the session adjournment coming on fast, it looks very much as if it will be left on base. The principal barrier is public-power-minded Representative Welch (Republican, California), chairman of the Public Lands Committee, who has evidently vowed and determined that no such bill will get out of his committee as long as he is in the driver's seat. He

already has told the Reclamation people and the bill's sponsors as much. Perhaps next session Reclamation Bureau critics will be able to blast the bill over Welch's blockade, but it will take plenty of blasting.

Washington Success Story

CONGRESSMEN in Washington are joking about finding a new formula for success in public life. All you have to do is get elected to the House of Representatives, then get appointed to an important subcommittee of the House Appropriations Committee. After that it is only necessary to hack and slash departmental appropriation budgets. After a Representative has developed enough nuisance value along this line, he is quite likely to be approached with a flattering suggestion that his talents would be better appreciated in some high administrative post. So runs the story.

This is not to say that the recent and sudden switch by the President in the nomination to the FCC, from Commissioner Wakefield to Representative Jones (Republican, Ohio), is entirely a "kick upstairs." It has been known for quite awhile that Representative Jones, one of the most able and industrious budget slashers who ever swung an ax in the Appropriations Committee, has been anxious for some time to get out of the turmoil of election politics. Jones' seat was about as safe as any Republican seat in the country — the fourth district of Ohio.

Furthermore, switching from the $15,000 job in Congress (with other perquisites) to the $10,000-a-year post on the FCC is hardly a financial elevation. But it will give Jones a chance to demonstrate his more scholarly and executive abilities. The fact remains, however, that Jones leaves Congress almost in the same manner in which his predecessor was tempted to leave a couple of years ago. At the time, the Democrats were running the House and Representative Jed Johnson (Democrat, Oklahoma) was swinging an ax on Interior Department funds just about as efficiently as Representative Jones.

There was hardly any attempt to conceal the fact that former Secretary of Interior Ickes was glad to have Representative Johnson offered a lifetime job on the Federal bench to get him out of Congress. It may be that Representative Jensen (Republican, Iowa), who will succeed Jones as Interior subcommittee chairman, is wondering what kind of a job the administration may have in store for him. Jensen is a pretty good man with an ax himself.

Of course, the House leadership insists on the record that it was simply a case of Republicans demanding that Republican vacancies on such boards as the FCC ought to go to regular GOP members and not to so-called "Roosevelt Republicans." Just the same, it is noteworthy that a good friend of Representative Jones on the other side of the aisle, Minority Leader Sam Rayburn (Democrat, Texas), very willingly used his good offices to further the Jones appointment. Rayburn's friendship with Jones has had to withstand the strain of some pretty heavy budget cutting for Southwestern Power Administration projects in Texas, dear to the heart of the former Speaker of the House. Now that strain will be removed —along with Representative Jones.

Utility Bull Shoals Bid Fails

NOW FPC has made public an order dismissing an application filed by the White River Power Company for a license authorizing construction and operation of a power plant which would utilize the head and storage capacity of the reservoir to be created by the Bull Shoals dam on the White river in Arkansas. The FPC order stated that inasmuch as the Bull Shoals project has been authorized by Congress for construction under the direction of the Secretary of War and supervision of the Chief of Engineers, the issuance of a license to utilize the head and storage to be created by the Bull Shoals development would conflict.

Exchange Calls And Gossip

The New Labor Law And Wire Services

The new Taft-Hartley Labor Act has plenty of applications to the wire and wireless communications industry, as it does to all industries. But the clear-cut picture of just what telephone and telegraph people can expect out of the law is still pretty vague. The big question is—will future strikes in the industry affect the national health and safety? And the answer lies only in the judgment of one man, the President of the United States. The discretion is entirely his as to whether any industry or part of an industry engaged in "trade, commerce, transportation, transmission, or communications" threatened with a work stoppage would "imperil the national health or safety."

Once the President decides that an impending communications strike would endanger national health and safety, the Attorney General gets an injunction halting the walkout for sixty days, and a special board of inquiry sets out to find the facts at issue. Then the workers are polled on whether they will or will not accept the company's last offer. At the end of the 60-day period, plus twenty more days for the voting and reporting of the vote, the Attorney General must ask and obtain the withdrawal of his injunction. This is the procedure even if the workers vote "No" to the company offer and indicate they will strike. Presumably the only resort of the President in a case of this kind is to report the situation to Congress, and, possibly, to seek another injunction by repeating the earlier process. Once the injunction is withdrawn, of course, there is no legal reason why workers cannot walk off jobs.

So there are two big "ifs" already visible in the new law. One is that communications disputes may or may not be subject to the antiutility strike provisions of the act. Another is that, if such disputes are subject to the act, eventual strikes are still possible. In view of the President's stolid opposition to the act, his use of the discretionary injunctive powers is likely to be sparing. His refusal to get entangled in the recent month-long telephone strike, and the relative over-all safety of the nation during that period, might indicate that another phone tie-up could be staged some day right under the nose of the new law.

The Taft-Hartley Act is clear on other provisions touching on communications, however. Jurisdictional strikes are expressly forbidden as unfair labor practices, and the National Labor Relations Board can get temporary injunctions to stop them. This may go a long way toward breaking up the running fight between the Communications Workers of America (formerly the National Federation of Telephone Workers) and the International Brotherhood of Electrical Workers (AFL). Both unions have fought tooth and nail over installation and construction contracts, and in some cases have succeeded in holding up telephone installations as much as two years. Of course the new law will not end the interunion fight, but it will drive it underground.

Driven underground also, unfortunately, will be the Communists and fellow travelers prominent in some communications unions, notably the American Communications Association (CIO). Unions with officers who are Communists or Communist sympathizers

forfeit their collective bargaining rights under the Wagner Act, as amended by the new act. But another provision has almost an opposite effect, in guaranteeing that Communists cannot be thrown out of unions. Under the present law, a union member can be ejected only for nonpayment of dues and initiation fees. In trying to stop the practice of union leaders of arbitrarily ejecting a nonconformist member, the labor law's authors inadvertently gave protection to the Reds and pinkoes now inside union ranks. The American Communications Association, now fronted by Reds, will in all probability still be backed by them. Nominal leadership will go to union leaders who have no Red taint, though real control of the ACA probably will stay in the hands of the Red rank-and-file ex-leaders.

THE standard union shop contract which most telephone companies have with unions of their employees will not be disturbed by the new act, provided that the union members covered by the contract vote for the inclusion of such a union shop provision. Contracts now in effect are legal until they expire, and new contracts made before August 22nd will be valid for one year without employee majority vote. Unions can be sued for breach of contract, however, and also for damages resulting from jurisdictional strikes and secondary boycotts. Dues check off can now be made only after written permission from an employee has been obtained.

One communication labor contract which seems certain to run afoul of the new law is that agreed to by Western Union and the American Communications Association, covering telegraph workers in the New York area. Under this contract, each one of the 7,000 telegraph employees will have a union dues check off of about $1.50 a month taken from his salary, whether he is a member of the union or not. The contract was signed last month. Commenting on this unusual feature, where the check off not only came out of wages of nonunion employees but went into union coffers, William Margolis, assistant regional director of the U. S. Conciliation Service, said that the provision was "not usual" but "not unique."

When the company would not grant the union a closed shop, the union insisted that nonunion workers should not be given a "free ride" to benefits earned for all employees through union efforts. Western Union also has made a similar agreement with AFL's Commercial Telegraphers Union, covering some 50,000 workers throughout the U. S. The CIO contract was retroactive to April 1, 1947, and is in existence until April 1, 1948. Presumably, under the "year of grace" provisions of the Taft-Hartley Act, both of these contracts will run their course without technical interference.

Industry-wide bargaining, such as that attempted by telephone unions last April, is still permitted, but members cannot be coerced into bargaining on that basis. Coercion to force workers to bargain industry wide is an unfair labor practice. Under the new CWA setup, it could hardly be said that the CWA "coerced" its membership to seek contracts on the national level. Besides, the Bell system may not be construed literally to be "industry wide" by the NLRB, so long as no bargaining is sought with independent telephone companies at the same time. In any event, the new law is loaded with $64 questions for both unions and management.

Some States Resisting New Phone Rate Requests

SPRING telephone contracts which called for higher wages to telephone employees are having their effect these days on rates for service, and public service commissions in various states have been presented with new requests for higher rates to reflect the higher costs. The New Jersey Bell Telephone Company told the commission that the recent strike and subsequent wage boosts would add $6,000,000 to the company's payroll expenses. The company announced it was filing new schedules to cover the add-

ed costs, and would not ask that the schedules become effective until October 15, 1947.

In several states, active opposition to rate increases by the states themselves complicated matters. In Maryland, the state asked the public service commission to disallow an annual rate increase of $2,800,000 asked by the Chesapeake & Potomac Telephone Company. A special session of the Rhode Island general assembly was planned to appropriate funds for the state public utilities division to investigate company rate schedules, which boost intrastate rates approximately 18 per cent. The funds (reported at $100,000) are to be used to hire experts and technical specialists to oppose the increase asked by the New England Telephone & Telegraph Company.

New Telegraph Bill Ends Government Wire Subsidy

By the time this reaches print, Western Union Telegraph Company will be in a position to gross at least $1,000,000 more in the next year than it did last year. The big boost came from Capitol Hill, where House and Senate passed, with practically no opposition, a bill (S 816) which ended the government's special rate privileges for telegraph messages. From now on Federal bureaus will pay the same rate for their messages that any private firm pays, unless in the opinion of the Federal Communication Commission the volume of business is sufficient to justify some special rate. Thus the telegraph company at last ends the subsidy it has been giving the government since 1866.

According to the Senate committee report on the bill, Western Union found it had made a bad bargain shortly after it built some lines west over the public domain in what was then Indian territory. In return for the questionable privilege of erecting telegraph lines across the wide open spaces, Western Union got an 80-year headache. Over the stretch of those years, Federal telegraph payments slowly rose from a flat $40,000 a year for service, to 40 per cent of regular fees, to the 80 per cent figure which was standard during the war. If this bill had been proposed and passed in 1941, Western Union might have been better off to the tune of between $1,000,000 to $5,000,000 per year. That does not represent much, but in Western Union's opinion, every little bit helps.

Representative Jones of Ohio Accepts FCC Appointment

The newest member of the Federal Communications Commission, in a sudden and unprecedented presidential switch of nominations, is 41-year-old Robert F. Jones, Republican member of Congress from Ohio. His nomination went up to the Senate last month, some three weeks after Ray C. Wakefield had been renominated by the President for another 7-year term. The shuffle led to some embarrassment all around, with the White House weakly advising that Wakefield's renomination was all a mistake that had occurred while Mr. Truman was in Missouri. (See *ante* page 104.) Jones' nomination hearing before a Senate Interstate and Foreign Commerce subcommittee made quite a splash in the press due to the sensational charges made by Drew Pearson, Washington Merry-Go-Rounder, in opposition to Jones. The new appointee challenged Pearson to prove his "libelous" assertions. Senators preferred to believe the Representative, and approved his nomination.

Representative Jones thus swaps a tough, high-pressure, 2-year legislator's job at $15,000 a year, for a relatively calm, deliberate, 7-year judicial post at $10,000 annually. It looks like a fair exchange of positions. As for the FCC, Jones brings to it a new conservative balance. As a firm defender of free speech, and, as an equally firm opponent of government ownership and onerous regulation, Jones should move the commission's viewpoint somewhat to the right.

Financial News and Comment

By OWEN ELY

The Issue over Original Cost

THE issue over the proper method of accounting for the cost of utility plants has remained an unsettled issue practically since the beginning of the regulation of the industry. For many years the 1898 Supreme Court decision in Smyth *v.* Ames was considered the law of the land, and, as interpreted by Federal courts, placed some emphasis on cost of reproduction. In the past decade or so, however, the idea of "original cost" has gained ascendancy in regulatory circles. New Deal agencies, particularly the Federal Power Commission (given authority to regulate the accounts of utilities doing an interstate business), interpreted this to mean "cost when first devoted to public service." This was nicknamed "aboriginal cost" in some quarters, to distinguish the FPC theory from the usual meaning of original cost; *i.e.*, actual cost to the present owner.

The situation was muddied somewhat by a phrase ascribed to Supreme Court Justice Brandeis, "prudent investment." Under this concept any investments deemed by the regulating authorities to be "imprudent" or badly advised could be deducted from original cost.

THE Federal Power Commission has for some years been investigating the plant accounts of all the utility companies which come under its authority, with a view to (1) eliminating so-called "write-ups" by charges to surplus (or where necessary by changes in capital stock account), and (2) eventually eliminating remaining amounts in excess of original cost ("plant acquisition adjustments") by amortization, usually over a 15-year period. The Securities and Exchange Commission, while it has less direct authority over accounting than the FPC, has supported these policies and in many cases has been able to obtain quicker results by the use of bargaining methods in connection with granting authority for refundings and other financing, especially where this involved holding company subsidiaries.

The FPC has tried to extend the application of its accounting policies by "leading" the state commissions. Such leadership has been exercised largely through NARUC (National Association of Railroad and Utilities Commissioners) and in some cases state commissions have invited the FPC to collaborate in rate proceedings. However, some state commissions, either because they are bound by state laws or for other reasons, have refused to follow the lead of the FPC.

The utilities have made no widespread issue over the correction of so-called write-ups — amounts on the books in excess of actual investment of funds— and the courts have upheld the authority of the commissions to require such adjustments. Many utility companies, acting under regulatory pressure, also have agreed to write off or amortize "plant acquisition adjustments," but authority of commissions to demand this change in the books has never been definitely determined in the Federal courts.

INCIDENTALLY, there is now pending in Congress an interesting bill by Representative Byrnes (Republican, Wisconsin) which would limit the jurisdiction of

the FPC over utility accounting by putting an end to conflicting state and Federal commission orders resulting in a duality of accounting for interstate utilities.

While this bill is not given too much chance for final enactment by disinterested observers, it might be viewed as evidence of a certain growth of sentiment for checking the FPC trend toward "aborginal cost."

There are two other kinds of adjustments in plant account over which issues are being currently raised: (1) increasing the depreciation reserve (which has the same effect as a write-off), and (2) making arbitrary write-offs of certain kinds of property even where such items would logically be included in "aboriginal cost."

The issue has arisen principally in the state of New York where the public service commission (though not "led" by the FPC) has been following a particularly strong policy. The commission has long wrangled with leading utilities in the state (Consolidated Edison Company, Niagara Hudson Power Corporation, New York State Electric & Gas Corporation, and others) over valuation and accounting questions. It has followed the example of the SEC in a policy of withholding or delaying approval of mergers, refinancing, etc., until concessions could be wrung from utilities with regard to plant accounting adjustments.

The large utilities have been loath to give in to the commission and a temporary compromise is sometimes reached by earmarking a section of surplus in an amount sufficient to satisfy the maximum adjustments envisaged by the commission. Consolidated Edison's big refunding program was delayed almost a year by discussions over utility plant accounting, including huge alleged "shortages" in depreciation reserves and "questionable items" in plant account. While the company did not accept or concur in these adjustments it segregated at the end of 1946 an item, "unearned surplus-special," of over $162,000,000, with a corresponding reduction in the stated value of the common stock. Niagara Hudson has set up a similar item of about $85,000,000 in its balance sheet in an effort to smooth the way for consideration of its proposed merger program.

A MORE immediate issue has been the Rochester Gas & Electric Corporation request for approval of a financing program both for refunding and new money purposes. As the price of approval the commission proposed (among other adjustments) that $6,658,171 "questioned" items be written out of earned surplus and that some $10,700,000 should be added to depreciation reserve. (Earned surplus amounts to only $9,578,950.) The most important issue arises over the question of writing out of plant account an item of $3,832,171 for water rights. The commission in 1943 (Case 9552) had ordered this write-off but the appellate division (a state court) a year ago annulled the commission's order and denied permission to appeal to the court of appeals.

In this case the court stated:

> I cannot subscribe to the proposition that the mere fact that petitioner acquired this property as a result of the consolidation is any evidence, much less conclusive evidence, that fair bargaining did not take place or that values were not properly measured in terms of price and legitimately capitalized. In the adjudications in the cases upon which respondents rely as authority for striking down the instant capitalization there were instances of merger or consolidation wherein the evidence disclosed inflationary practices as to which the record before us is barren of evidence.
>
> As to the part of the order which directs the write-off of the remainder of the account pertaining to intangible capital, for the reasons aforestated—*vis,* failure of hearing and consideration of evidence as to values—it should also fall. Moreover, the order's direction to accelerate the 1938 arrangement for the amortization of that account has no evidence to support it.

The company, therefore, feels that this amount can properly remain on the books. The commission, however, refuses to recognize the final character of the court decision, and states in Case 12966 (May 1, 1947): "The order of the commission which was annulled by the

court was an accounting order prescribing journal entries. The items are being further investigated by the commission's staff and further hearings will be held thereon in Case 9552. They have the same status as any items questioned by the commission in an accounting case and not yet finally decided."

THE company maintains that the water rights in question were purchased from nonaffiliated companies at arm's-length bargaining and that the appellate court held them to be good assets. The commission apparently considers that the court merely ruled on one technical phase of the matter and that real authority rests with it. A recent decision of the New York Court of Appeals has, however, complicated the commission's position in relation to the courts by permitting general court review (rather than the much more limited certiorari proceedings) in appeals from commission decisions where confiscation is claimed. (See June 19th issue, PUBLIC UTILITIES FORTNIGHTLY, pages 849 and 867.)

The point to be emphasized in connection with the water rights case is that it goes beyond the theory of original cost and even of prudent investment. The item in question was fully paid for by a utility company and has not been proved to be a bad investment.

Mandatory v. Voluntary Plans To Retire Securities

DURING the past twelve years in which the SEC has sought to enforce § 11 of the Public Utility Holding Company Act, a variety of methods has been used to retire holding company securities, such as: (1) Voluntary exchange offers to holders of senior securities. (2) Mandatory exchanges either for a single security or for a "package" of securities (with cash in some cases). (3) An allocation formula for dividing assets between senior and junior securities. (4) Open market purchases made under SEC supervision. (5) Redemption of entire bond or preferred stock issues at par and accrued dividends, or at call price plus accruals. The latter method is usually dependent on the sale of substantial assets, though in a few cases holding companies (Standard Gas & Electric Company, United Light & Power Company, and others) have been permitted to borrow from the banks.

In choosing between the various methods the SEC has coöperated in some cases with utility managements, but in many other cases plans have been vetoed or killed by "silent treatment." There does not appear to be any very consistent pattern in the choice of methods, although when the stock market is advancing strongly there is a natural preference on the part of utility managements for outright sale of holdings.

At this time we are only interested in comparing the first two methods, the voluntary and mandatory exchanges. In 1947 two big holding companies, Commonwealth & Southern Corporation and United Corporation, have tried voluntary exchange offers, both of which proved unsatisfactory. The principal reason was that we were in a declining or irregular stock market. In the case of the United offer (4 shares of Columbia Gas & Electric Corporation and $2 cash for one share of preferred) the commission took some weeks to act on the proposal and, by the time its approval was forthcoming, the price of Columbia Gas had dropped a point or two and the offer was no longer attractive. The Commonwealth offer, while not subject to such long delay, apparently failed because of an over-optimistic appraisal of the potential market value of Southern Indiana Gas & Electric Company. (The other two stocks, Consumers Power Company and Ohio Edison Company, already had markets on the Big Board.) Both offers suffered from too close figuring, and too much reliance on potential tax savings as an inducement. Voluntary exchange offers should "give the customer a break"—*i.e.*, offer the security holder more than he is giving up—in order to prove successful, particularly in irregular markets.

WHILE United Corporation had been successful in some of its previous exchange offers, the management indicated its disappointment over the latest development by turning to a mandatory plan. It is rumored that Commonwealth & Southern may also follow suit. United has already filed a new "skeleton" plan with the SEC for an exchange package consisting of three of its best holdings—Columbia Gas, Cincinnati Gas & Electric Company, and Public Service Corporation of New Jersey (or its successor company under the pending merger plan). The exact amounts of each stock which will make up the package will be announced later in the hearings, following the technique recently used in the Public Service plan.

But in turning to mandatory plans the holding companies are merely exchanging one set of uncertainties for another set. No matter how promptly the SEC may pass on such plans, they have to go to a Federal court for enforcement, and fresh delays will be encountered if security holders are dissatisfied with the terms. The long, irregular fight over "RIPS" (Rhode Island Public Service Company) $2 preferred stock is a case in point. Other illustrations are the long struggles over the various Northern States Power Company and Standard Gas exchange plans.

Apparently a new technique is called for. The mandatory plan is advantageous in that it disposes of all securities in one operation, which the voluntary plan seldom does. The whole difficulty lies in the constant shift of values in the stock market—either of the securities composing the package, or of the general market yardstick if (as in the Northern States Case) there is no market quotation for the security to be given in exchange. If the mandatory plan could be designed on a flexible basis, so that the number of shares in the package could be adjusted to market values at the actual time of exchange (or only a few days prior thereto), this would solve the problem.

Of course it would be necessary to provide that the exchange would be consummated only within certain market limits, since otherwise in a rapidly rising market the senior security holders would gain too big an advantage. (This occurred in the Standard Gas bond exchange plan.)

INCIDENTALLY, in that plan the SEC provided for automatic adjustment of the number of shares through an index of market change; but this device did not operate after the plan left the commission's hands and entered the Federal courts, hence it did not solve the problem. What is needed is a device, such as that suggested above, which is an integral feature of the plan and can be carried through the entire period until the plan emerges implemented with a final enforcement order.

The SEC's occasional practice of ignoring market value by fixing the theoretical price which it considers to be normal value based on earnings and dividends does not always work well. For example, the commission recently adjusted North American's exchange offer to holders of North American Light & Power Company by figuring the value of Illinois Power Company at 33 and offering .3 of a share (as an alternative to the $7.50 cash offer). With Illinois Power selling at 30 instead of 33, the fraction is currently worth about $9 instead of $10.

Phone Issue Disapproved

THE New York Telephone Company's application to the public service commission for permission to issue $125,000,000 of 35-year debentures was refused last month on the ground that it "does not conform to the standards set up in numerous other cases." The purpose of the issue was to repay $100,000,000 advanced by the parent company, American Telephone and Telegraph Company.

Among other things the commission found that the company's bidding terms "do not specify a maximum price of the debentures."

What Others Think

The Essence of Economics

At a hearing of the congressional Joint Committee on the Economic Report, held June 24th, Charles E. Wilson, president of General Motors Company, testified regarding "economic and social matters that affect the welfare of the nation."

Appearing at the invitation of the committee, Mr. Wilson, as a background for his remarks, made some comments about General Motors and the automobile industry, in which he said in part:

> Cars and trucks are so important to our American way of living, and the unsatisfied demand for them is so great that more materials to work with is all the automobile industry needs now to do its part in maintaining a high level of prosperity. The industry alone, with its big use of raw materials, the millions directly and indirectly employed, and its stimulating effect on other industries and business generally, practically underwrites a high level of industrial activity for at least several years to come unless we have another wave of monopolistic and crippling strikes or a world catastrophe....
>
> The development and production of our American automobiles is one of the best examples of what can be accomplished for the people of a nation by the normal working of free competition in a free society. I have been associated with this development for thirty-five years....
>
> I think I understand what has made this industry develop and flourish and how it has been possible for it to make its outstanding contribution to higher American and worldwide living standards. This achievement has been possible only under a political system that recognized human rights in person and in property and that promoted the initiative of millions of freemen rather than the dictatorship of a few state planners. Customers are the only economic dictators that can be tolerated in a free society....
>
> It is well to remember that our Americanism is still the new revolutionary, liberal philosophy in the world. Those who advocate Communism, Socialism, or any form of statism, while flying the flag of liberalism, are in fact reactionaries, advocating a system which would enslave the people of a nation....
>
> Ours is the only important country in the world that has recognized the importance of free competition, as evidenced by its enactment of antimonopoly and antitrust laws. It is clear that this same basic principle must also be applied to monopolies in labor . . .

The General Motors president then set down the following points as being highly important "among the fundamental principles that make our system work":

> 1. The necessity and responsibility for each citizen to qualify through education, experience, and willingness to work to make a social and economic contribution in proportion to the reward he expects to receive. This requires dropping the false philosophy that the state should look after the economic welfare of individual citizens and returning to the sound philosophy that each should make the effort to look after himself, and that the millions can plan their own lives better than a few state planners can plan for them. It does require continuing our system of public education so that all young people may have opportunity to qualify in line with their ambition, ability, and willingness to work.
>
> 2. The principle that thrift and industry must have their reward and laziness and dissipation pay their penalty. This is a sound incentive for all. If it is importantly violated by state planning, the negative incentives of fear and coercion must inevitably be substituted for the positive incentives of a free society.
>
> 3. The recognition that we can all have more only if we produce more. It requires reasonable hours of work as compared to leisure time and continuing progress in making available better tools and methods for doing all the kinds of things that have to be done to deliver products and services to customers. It requires giving up the false philosophy of something for nothing and that prosperity for the nation can be achieved without efficient work by redividing the accumulated wealth of the past. To provide better tools capital must be accumulated through savings to pay for them. The hope of profits is the incentive that encourages people to save, to invest their savings in productive enterprise, and to develop new businesses.
>
> 4. Customers must have free choice in the

expenditure of their earnings and savings. An economy of plenty is the natural result of free competition, and the false philosophy of prosperity through regimentation and scarcity must not be encouraged, especially by law.

5. Respect for law and the rights of all citizens and the development of a social consciousness in our business and human relations. None of us can live entirely by his own efforts. To a great extent we are all dependent upon one another not only for health and safety but for our very existence.

After commenting upon some of the major problems involved in maintaining full opportunity for employment—especially that of dealing with temporary shortages and surpluses of goods and services, with a reference to the business cycle—Mr. Wilson made these penetrating observations to illustrate "why no nation ever achieved prosperity through inflation":

There is a serious economic heresy that constantly keeps cropping up in all of the discussions of this problem of maintaining a high level of employment. It is that we can maintain such employment only by rapidly increasing the wages of factory workers. Such rapid increases in wages without any corresponding increase in productivity are essentially inflationary since these increases require corresponding increases in prices.

While the workmen involved in such wage increases might temporarily seem to gain thereby, actually they do not. For other producers, who are in the great majority, raise the prices for their goods and services, eventually bringing about a parity in the value of all goods and services throughout the economy, but with a lessened demand.

This does not seem to be clear to some who argue that such an inflation would do no particular damage since a balance in prices would ultimately be restored. Actually, great damage is always caused by such an inflation. It writes down the value of all savings in terms of current purchasing power, thus importantly affecting both the ability and confidence to buy on the part of those dependent on savings, annuities, or any form of fixed income, even for their services. Furthermore, greatly increased working capital is required to maintain a given volume of business. This additional capital in terms of dollars cannot be currently earned as rapidly as the inflation requires. Therefore, either prices must be raised in the effort to accumulate the capital required, thereby curtailing demand and resulting in unemployment, or businessmen are forced to restrict their activities within the limits of their available capital, resulting in a curtailment of production and again causing important unemployment....

In the final analysis employers do not pay wages—customers do and the percentage of the consumer's dollar required to provide equipment and a place to work, and as an incentive to save and expand the economy of the whole country has been estimated to be, with a stabilized economy, on the average about 15 per cent. This covers all rents, interest of all kinds, dividends, and accumulated profits retained in businesses to expand them. The balance of 85 per cent shows up somewhere in somebody's wages or salaries. However, in an inflationary period, when the value of savings is being written down, profits must be much greater in order to accumulate enough capital to maintain a high level of physical production. In such a period prices must go up even faster than wages in order to keep businesses going. In such a period customers restrict their purchases. Therefore, when some workers price their labor so high that the workers in other industries, other producers, and consumers generally cannot buy their products and industry and business cannot make enough money to maintain working capital and replace worn out equipment, there is bound to be a curtailment of employment until the situation is corrected.

One of the fundamental reasons why "this country enjoys the highest productivity of any nation on earth," Mr. Wilson declared, is that "we have better tools." But, he added, "better tools and equipment do not spring full blown out of the mind and hands of one man." He said:

. . . They are the product of long hours of research, of the painstaking application of such knowledge to the design and production of better products by competent management. They require large investments in productive equipment, efficient sales forces, and efficient and aggressive workmen. Only as we can increase our productivity further can we hope to continue to raise our standard of living in the terms in which it can concretely be measured, the goods and services we use.

Now, if the only way by which we can maintain and increase our standard of living is by increasing our productivity, it follows that any policy which increases our productivity is economically sound, and any policy that diminishes our productivity is economically unsound.

These things are true, Mr. Wilson told the joint congressional committee, of governmental policies — Federal, state,

and local—as well as industrial and labor union policies. This is the heart of the matter, he declared. "If we want more, we must produce more."

All present legislation affecting this problem of high employment opportunity, it was pointed out,

> should be reviewed to make sure it is consistent with the fundamental principles of our system and whether it really accomplishes the purposes for which it was intended. Any new legislation proposed to improve our competitive system should likewise be checked.

And, in closing his statement, Mr. Wilson expressed his views as to the ways in which the government can assist in these matters. He said:

> Government can help, not by going into competition with its citizens nor by attempting to regulate production, wages, and prices, but by legislation which fosters free competition both in business and labor. The peaks and the valleys of the business cycle can be importantly influenced and leveled out by sound fiscal policies on the part of the government. Government policies should not promote inflation, and needless taxes must not be collected from the people. Federal expenditures not directly contributing to the welfare and standard of living of our citizens must be avoided. Such nonproductive governmental expense reduces the average standard of living by about the same proportion of the national income that it represents. All citizens must realize we cannot have an economy of plenty if millions look to the government for something for nothing and do not make the effort to look after themselves. Government policies must encourage individual competence and not subsidize inefficiencies and laziness in any form.

It would seem that Mr. Wilson's comments "regarding economic and social matters that affect the welfare of the nation" are so practical and timely that they could well serve as a primer on this subject.

The factual information to be found in his remarks, so simply and clearly expressed, might prove of material value in aiding employees to better understand these essentially fundamental factors in our national economy.

—R. S. C.

Venture Capital Is the Spark

At the annual meeting of the New York State Bankers Association, held in Quebec, Canada, in June, some instructive things were said by H. E. Humphreys, Jr., chairman of the finance committee of the United States Rubber Company, on the subject of "Venture Capital in a Free Economy."

Inasmuch as venture capital, or "equity money," is so necessary in the financing of the growth of the utility industry, the comments in this address upon the subject are of more than passing interest.

Capital is primary and fundamental to the functioning of any economy, the speaker pointed out, whether it be free or controlled. If the creation and use of capital is repressed in a free economy, however, it soon will become controlled. He then observed:

> The continuation of prosperity in the United States is threatened by the inability, and unwillingness, of individuals to supply risk, or equity, capital to our economic machine. Yet, this is the only way to keep the machine running in high gear.
>
> The fear of so many "do-gooders" is that some people may get rich if they are left to their own devices. Therefore, tax laws are proposed and designed to hurt the rich, and alleged to be a means of helping the poor....
>
> In early industrial America, good profits were not only made, they were saved and plowed back into business to supply bigger and better plant and equipment to make better quality products at lower cost to the consumer and thus benefit more and more people. Venture capital, productively employed, became the source spring of the American standard of living.

Addressing himself then to the matter of taxes, Mr. Humphreys said:

> ... the American people should have as much government as they want, provided they know its cost and are willing and can afford to pay for it.
>
> In this setting, what is the cost to the people at large? I mean, of course, the cost under a balanced Federal budget, and at levels of national income that are reasonable to expect.

The national income is of vital importance not merely as the mathematical measure of the money available for taxes, but more importantly because it measures the degree of employment. It is men at work.

How can we have men at work unless there are factories and offices and stores and service stations to work in? And how can we have factories and offices and stores unless someone invests his capital in these facilities?

And who is going to supply that capital? The answer is obvious. Only the man who has something left after paying his taxes and his living expenses—and who has the courage to take a chance with it on some venture. (Note the priority given taxes—it is a prior lien on everyone's income.)

LIKENING venture capital to the spark in a gasoline engine, and comparing the engine itself to the basic stimuli which must always exist at the beginning of every period of prosperity, the way in which savings come about was thus outlined by the speaker:

Just as the self-starter turns over the pistons of your gasoline engine and draws into the cylinder head the gasoline vapors, so the basic stimuli of the economic machine are reflected in orders for goods and services of all sorts. These orders translate into activities which create the gross national product from which is extracted the needs of the government, the needs of business for replacements and increases in inventories, and the needs of our citizens for goods and services. Deducting business and other indirect taxes, depreciation reserves, etc., leaves national income. Deducting these from transfer payments, corporate savings, and social security leaves income payments to individuals out of which must first come personal income taxes, then consumer expenditures, and the balance remains as the savings of individuals. . . .

But if taxes unduly limit savings, or if, as in the pump-priming Thirties, confidence is so lacking that savings lie idle in the banks, the spark is not there to flow into stimuli and the machine will not run. It can only coast downhill.

At what level of income do savings arise? Probably the relatively most thrifty people are those with the relatively lowest incomes. I say "relatively lowest" because no worker in America productively employed has a low income in an absolute sense. Because there are so many persons in the lower and moderate income groups their aggregate savings are considerable. This fact is important in the contribution to the deposits in savings banks and premiums paid to insurance companies. But, as such institutions, wisely, are not permitted to back new and untried ventures, these kinds of savings are not what I mean by venture capital.

The real source of "*potential* venture savings" was then explained by Mr. Humphreys, and the effect of the tax burden upon these savings. He made the following statement:

This does not mean that venture capital is completely dead and buried. Some adventurous souls still whittle down their margin of security and restrict their mode of living in order to back new inventions and take the long chances without which no new industry can be launched. But it does mean that confiscatory income taxes in the middle and higher brackets stand squarely in the way of risk capital. Until these taxes are further reduced—much further, in fact—capital cannot be accumulated fast enough to insure either the jobs or the prosperity which our country needs.

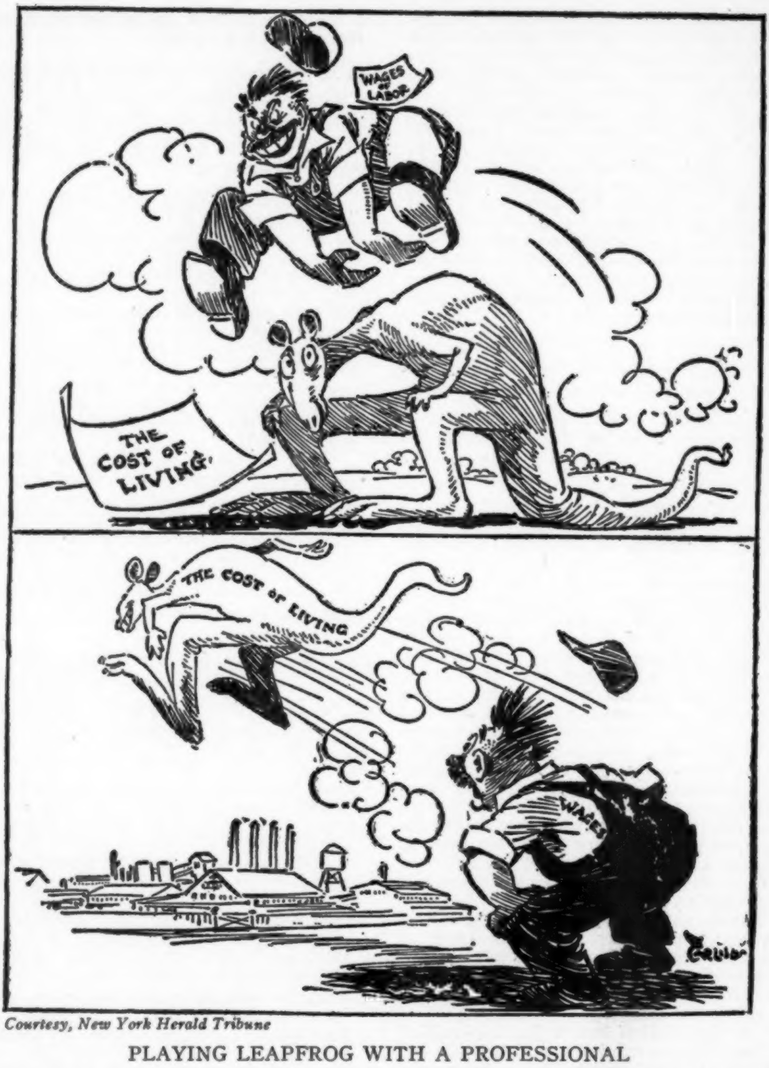
For fifteen years, venture capital has been penalized, as if it were a fifth wheel, a vermiform appendix which our economy could just as well do without. Yet the citizen who wants a good job and the chance to get ahead —the American who has not yet amassed one cent of venture capital—is the very man who most desperately needs unsparing quantities of it in our economy.

"WE are not standing still," the speaker asserted. "Our population is growing . . . more than half a million workers are added to the labor force every year." He added:

. . . In manufacturing, the investment required to put a worker to work in a completely new job is at least $8,000. This amounts to $4,000,000,000 a year—without considering the necessity of providing new machines for workers already in the labor force.

And costs are rising. Machines wear out, and they cannot be replaced today for anything near their original price. For sustained prosperity for all, we need many more machines and many new industries. Many industries in order to increase efficiency and keep up with the competitive race must retool from the ground up.

Dwelling then upon the vital need of venture capital, and how little the average man appreciates the impact of income taxes on the higher incomes, Mr. Humphreys mentioned that a recent Gallup poll disclosed that the "man in the street" thought the man with a $50,000 income paid a tax of only 18 per cent, little realiz-



Courtesy, New York Herald Tribune

PLAYING LEAPFROG WITH A PROFESSIONAL

ing he paid nearly 50 per cent. Consider, he said, the future of business

. . . and the whole United States and all its citizens if there were no incentives to make more than $10,000—a ceiling on the ability of man to reap the fruit of his labor. There would be no leadership—little saving—essentially no venture capital, and no reason to strive to make a profit. Business would fall to government by default—there would be no private ownership because there would be no saving to start anything.

And, if government owned business, profit would cease to be the motivating force, therefore efficiency and economy would cease—waste and inefficiency would reign supreme—production would diminish, and the American standard of living would disappear from the world.

America's $50,000,000,000 government today is approximately 30 per cent of its national income. The people may know this cost in a general way. Too many of them, however, have no idea that they pay for it. If they did, it is a grave question whether they would be willing to do so.

And, with reference to the intimate tie-in between taxes and production, this pertinent observation was made:

. . . Our government's services at home and its contributions to its own people and to our foreign friends should not exceed the people's willingness to pay taxes—and taxes must be paid from the production of men at work. But of even greater importance, government should not levy taxes which will dry up production. Regardless of how willing people may be to pay taxes to support extravagant government, they should not be willing to undermine their ability to pay. . . .

Remember, despite what many are now claiming, as intelligent men did in the 1920's, the millennium has not yet, *and again,* arrived. Profits have not completely, and in perpetuity, succeeded losses. We are still in a profit-and-loss economy. Business, in general, carried relatively large sums to surplus in the war years. But, what's this I hear about large corporations such as du Pont, General Electric, Texas Company, General Motors, and yea even United States Rubber, seeking new capital in the form of public or private bond issues or preferred stock? What's become of the alleged swollen war surpluses of American industry?

The obvious conclusion, in considering all these factors in continuing to provide the funds to finance production, Mr. Humphreys pointed out, is the need of equity capital. But, he said, "where shall we get it?" adding:

The stock market indicates that the investing public is trying to dispose of it rather than supply it. This may be due to several things.

First, many people are living on capital—selling common stocks to raise cash to maintain standards of living previously built up under less onerous taxes—and staying with safer investments with surer though limited income, such as bonds and preferred stocks.

Second, certain influential persons in our Federal Reserve System believe it an iniquity for stocks to be traded in as freely as other merchandise, and only limited credit is allowed against a pledge of this sort of collateral. It is certainly strange that the securities of companies well enough known to be listed on a stock exchange thereby acquire an affliction by which their collateral value is seriously impaired.

Third, and on taxes again, not enough savings are being accumulated with which to start new businesses, and the prospect of starting is considerably dimmed by the surety that little of the profits, if made, can be kept by the individual taxpayer, while the undiluted losses are all his.

In closing his address, Mr. Humphreys told his audience of bankers that they "have a duty, as stewards of depositors' and stockholders' money, not only to protect capital, but to help increase it." And he urged their support of:

1. Economy in government—Federal, state, county, and local. Do what you can and all you can to eliminate waste and inefficiency. Keep government at the minimum. Always bear in mind that only the people can support the government; the government cannot support the people. The government was designed for the general welfare of all the people in the honest pursuit of their businesses and professions.

2. Then, when governmental expenditures are reduced to a reasonable level, insist with all your might and power on planned *balanced* budgets, including

3. An orderly retirement of the public debt. Every year's budget should include a provision for some reduction of the debt, even if it's only one per cent. As debt declines, so does interest, and so do taxes, and

4. Tax reduction will automatically follow the reduction of governmental expenditures. But the tax burden must be equitably distributed. Please don't let our legislators overwork the capacity to pay theory. To a certain extent it is reasonable, but when taxes take more than 50 per cent of any man's income that's too much. Bend your efforts to getting relief from the overwhelming burden of taxes on the middle and upper income brackets and support legislation limiting the top take to 50 per cent. We must look to these groups for venture capital.

5. Eliminate the double taxation of corporate dividends.

6. Extend the community property privileges—for Federal tax purposes—to the citizens of all the states.

The direct impact of the tax burden upon the availability of venture capital seems clearly evident in this picture presented by Mr. Humphreys. That this condition exists, and that it impedes the development of our economy, suggests the importance of more people generally understanding how this situation affects the welfare of each individual.

—R. S. C.

Annual Meeting of Southern Gas Association

ATTENDED by one thousand delegates, from the thirteen southern states which are said to produce 70 per cent of the nation's natural gas, the annual convention of the Southern Gas Association was held at the Buena Vista hotel in Biloxi, Mississippi, several weeks ago.

Sessions were opened by Dean A. Strickland of the United Gas Corporation, Houston, Texas, the retiring president of the group. He warned the industry that its position is challenged by new processes for gasification of coal and the fantastic, yet entirely practical, possibilities of atomic energy. He declared:

> Natural gas is still the cheapest and most efficient fuel known. But we must work constantly to reduce costs and increase operating efficiency and find new markets in industry as well as in the home.
>
> In our territory is stored great natural resources. Practically every known product can be grown or produced here and it is our job to adapt gas to the development and manufacture of these natural resources into finished products.

More than 4,000,000 families in the United States will receive natural gas service by 1950 and users will be able to expect better service at fair cost, it was predicted by R. H. Hargrove, president of the American Gas Association. In his address, Mr. Hargrove said in part:

> The rising national income, which has jumped from $71,000,000,000 in 1940 to $164,000,000,000 in 1946, has opened new vistas for the expansion of the South's natural gas industry. In the same period, the value of manufactured products rose from $88,600,000,000 to $194,000,000,000. Manufacturing payrolls now show an increase of 160.7 per cent over 1939.

CHARLES I. FRANCIS of Houston, attorney who has represented the industry in litigation for many years, reported on progress of a fight to curb control of the Federal Power Commission over state operation of production and distribution of natural gas.

Bureaucratic encroachment of the FPC on state domain, in price regulation by decrees covering end use of natural gas and by other restrictions, has discouraged new exploration and production, said Mr. Francis. Low field prices encourage waste of flared gas—a problem which would be eliminated if the industry was free to develop on a sound competitive basis, he asserted.

W. L. Woodward of Alva, Oklahoma, president of the Zenith Gas system, was elected president of the association for the coming year. Other officers chosen were W. H. Ligon, Nashville Gas & Heating Company, first vice president; Dean A. Strickland, United Gas Corporation, Houston, immediate past president; E. L. Baxter, president of Arkansas-Western Gas Company, second vice president.

"WE should use the scientific discoveries, the modern methods of production and distribution, and worldwide credit programs to ensure a better way of life; but all of the resources in the world will be of little value to this end unless human beings are going to recapture the ideals and the spiritual values so essential to a well-balanced civilization.

"Let us recognize that the knowledge of how to help ourselves is tremendously more important than the contacts we use for help. Let us remember that subsidies and doles tear down the general average of the standard of living."

—HENRY H. HEIMANN,
Executive manager, National Association of Credit Men.

The March of Events

In General

TVA to Sell Town

THE Tennessee Valley Authority announced last month that the town of Norris, which it built as a model city, will be disposed of "in a year or so."

Under the TVA Act, the properties must be sold at public auction. It had not been decided whether the whole town would be sold as a single unit or houses and lots to individuals.

Norris was built in 1933-35 to house workers on the Norris dam project. It contains 336 family dwellings, dormitory, administration building, school, post office, fire department, and laboratories.

SEC Chairman Reëlected

JAMES J. CAFFREY has been reëlected chairman of the Securities and Exchange Commission for the year ending June 30, 1948, the agency announced recently.

Mr. Caffrey was appointed to the commission in 1945 after serving as an attorney and head of the regional offices in Boston and New York. He was elected chairman on July 23, 1946.

FPC Issues Depreciation Study

A STUDY of the depreciation practices of the larger privately owned electric utilities in the United States, presented in a report issued last month by the Federal Power Commission, revealed a marked trend toward the general adoption of straight-line depreciation accounting and a material increase in the size of the reserves in relation to electric plant.

The study shows that at the end of 1945 the average ratio of reserve to electric plant for companies using the straight-line method of providing for depreciation was 24.6 per cent and the average based on all other methods was 19.5 per cent. In comparison, a similar report issued in 1937 showed a 19.6 per cent ratio of reserve to total plant at the end of 1937 for utilities using the straight-line method and a ratio of 10.5 per cent for all other methods. The average reserve ratio of companies presently using the straight-line method is not strictly representative of the results of consistent application of the method, however, as many of the utilities have only recently adopted straight-line accounting. The utilities using the straight-line method during the entire period of 1937-45 show a ratio of reserve to plant of 30.1 per cent at the end of 1945.

In 1945 slightly more than 52 per cent of the utilities studied were using the straight-line method compared with slightly less than 15 per cent of the utilities analyzed in 1937. Utilities whose depreciation rates are based on the estimated average service life of individual units of property, of functional classes of property, or of total depreciable property are included in the straight-line group.

The study is entitled "Electric Utility Depreciation Practices" and includes detailed data on all privately owned utilities having annual electric operating revenues of $250,000 or more for 1945. These 322 utilities include over 98 per cent of the total electric plant of privately owned electric utility industry in the United States. The price is 25 cents a copy.

Alabama

Demand Gas Franchise Vote

DR. S. W. WRIGHT, chairman of the Bessemer utility board, presented to the city commission on June 24th a petition containing 1,300 names calling for an election on a franchise recently granted by the commission to the Birmingham Gas Company.

The commission granted the franchise early last month, by a vote of 2 to 1 of the three commissioners. Dr. Wright challenged the 30-year franchise.

The gas company contended in its plea for the long franchise that it intended to supply the city with natural gas, and that the long-time franchise would be necessary to make the project pay expenses of the new installation.

The franchise was a renewal of the gas company's original permit.

Arkansas

Referendum Date Fixed

WITH no contest of referendum petitions bearing 357 signatures certified as qualified electors by City Clerk H. C. Graham, the Little Rock city council fixed July 22nd as the date for an election on the new franchise granted the Capital Transportation Company in an ordinance passed May 5th.

The aldermen previously had agreed on July 15th for the election, but moved up the vote to insure compliance with election laws. Twenty days will have expired from the date of proclamation until the election, it was said.

Voters will be asked to approve or reject the extended franchise as approved by a 5-to-4 vote last May.

California

Offers to Lease Transit Lines

J. L. HAUGH, western transit operator and former president of Key System, offered to take over and rebuild San Francisco's streetcar system last month. In return for a 30-year lease, he offered to pay 2 per cent on the gross revenue which he says will bring the city $700,000 a year revenue instead of its present $350,000 a year loss.

The offer was made in a letter to the board of supervisors. Haugh offered (1) to organize a company to be known as San Francisco Rapid Transit Lines, which would take over the company completely: trackage, rolling stock, employees—everything but present obligations; (2) to spend $14,000,000 to purchase new rolling stock and put on 800 new coaches within the next three years.

San Francisco Rapid Transit Lines would take over all operating expense and personnel, work out an employee pension plan, and purchase all needed supplies now owned by the city.

The grand jury's recommendation for a November vote on the question of leasing the Municipal Railway to private operators was criticized by Utilities Manager James Turner. Turner remarked on the jury's admission that the recommendation was not based on an investigation of railway operations.

"The grand jury," he said, "suggests the people vote on a lease proposition because the jury has not the funds to conduct an investigation. Thus, the public is asked to make up its mind without the facts. The facts, of course, have been developed again and again to the advantage of the Municipal Railway."

Carroll Newburgh, grand jury fore-

man, in replying to Turner, said the jury had made no specific recommendations, leaving all decisions up to the general public.

States Its Natural Gas Policy

THE Pacific Gas and Electric Company last month defended its natural gas policies at a hearing of the state public utilities commission called to consider California's dwindling fuel resources. Attacking PG&E were representatives of California Manufacturers' Association, Coast Counties Gas & Electric Company, and a number of industrial users of natural or "dry" gas. Basically, they wanted to know what PG&E was going to do about providing industrial users with a larger supply of natural gas, a prime industrial fuel.

James S. Moulton, PG&E's executive engineer, stated his company's policy from the witness stand as follows:

1. PG&E does not feel duty bound to furnish its industrial users with natural gas under present public utilities commission regulations.
2. PG&E will not withhold large quantities of gas from industrial users until they have ample substitute fuels—mainly oil.
3. PG&E would object to exploitation of gas resources by other utilities, or by private organizations in a position to handle their own gas needs.

Under questioning, Moulton said his company was watching natural gas drillings in the Rocky mountains and had consulted with the El Paso Gas & Electric Company regarding importation of Gulf coast gas to this region. The latter project, however, would involve construction of a 1,750-mile pipe line, he said.

Indiana

Employees Call Off Strike

A STRIKE of members of the Gas, Coke & Chemical Workers Union at the Citizens Gas & Coke Utility, which began April 2nd, had ended June 21st, according to an announcement by union leaders.

Ira Williams, international representative of the union, said the strike had been lost but efforts would be continued to reinstate the members as employees of the company.

The strike began when the union attempted to obtain recognition from the gas company management. Operation of the company was not halted, however. The dispute has resulted in considerable litigation. A temporary restraining order was issued by Judge Lloyd D. Claycome, in circuit court, early in the strike to prevent picketing, but the order later was dissolved and picketing was resumed.

Company officials would not give an estimate on how many employees were involved, but union officials have estimated the number at 400.

Kentucky

Asks PSC if It Has Jurisdiction

PETROLEUM EXPLORATION, INC., which wholesales gas to three Kentucky companies, submitted a 2-question petition to the state public service commission last month.

First, it asked the commission to rule on whether the commission has jurisdiction over the company.

Second, if the commission rules that it has jurisdiction, then Petroleum Exploration asked for authority to install more than $1,000,000 worth of new equipment in Clay and Knox counties.

The company was before the commission in a rate reduction case. The commission had ordered the company to show cause why its wholesale rates, which the

commission contended yielded a 17 per cent return in recent years, should not be lowered. In that case, the company has contended it is strictly a gas wholesaler and that the commission's gas jurisdiction covers only retailers.

The commission set July 15th for a hearing on the petition.

Minnesota

Heating Installation Curb Adopted

An ordinance restricting installation of gas furnaces in St. Paul to replacement was given final adoption by the city council recently.

The ordinance makes it illegal to install any space-heating, gas-burning equipment in the city, except under permit to replace existing installations. Purpose is to prevent a drain on the available city gas supply pending distribution of natural gas in adequate quantities for heating purposes, a development not expected for two years.

Missouri

Escheat Bill Signed

A bill amending the state escheats law, to strengthen the claim of the state to undistributed portions of funds impounded in litigation in state and Federal courts over rates, premiums, fares, and other charges was signed last month by Governor Donnelly.

The act would place the state in position to take over unclaimed balances in similar funds arising from litigation over utility rates and charges, where the funds were impounded by court order and persons to whom refunds were due could not be found.

The bill provides the state may institute suit to transfer to the state treasury any such funds unclaimed for five years after refunds were ordered by the courts. Persons entitled to refunds could file claims within two years after such a fund was transferred to the treasury. Thereafter the fund would become the property of the state.

New Jersey

Acts to Study Dam

New Jersey moved last month to participate in a joint or concurrent hearing with the Federal Power Commission on an application of the Electric Power Company, Inc., for a license to construct the proposed triple dam on the Delaware river around Warren and Sussex counties. The application was made to the Federal body.

Action for the state was taken by President John E. Boswell of the state public utilities commission. He notified the Federal group by letter that there was considerable interest in the project which affects not only New Jersey but Pennsylvania and New York as well, and said that this state would participate under provisions of the Federal Power Act.

Electric Power Company filed its application with the FPC August 27, 1946. A previous application filed by the company with the Federal commission was dismissed without prejudice November 3, 1942. At that time the state public utilities commission made a study of the proposal and a report was submitted to former Governor Edison.

The applicant proposes to operate in New Jersey and Pennsylvania and, if

necessary, in New York, Delaware, and elsewhere. A general description of the proposed project calls for construction of three dams and reservoirs in the Delaware river between New Jersey and Pennsylvania at Tock's island, near Shawnee, Pennsylvania, at Belvidere and at Chestnut Hill.

Oklahoma

Coöperative Reduces Rates

THE board of trustees for the Caddo Electric Coöperative announced to its members recently a 50-cent monthly rate reduction, effective July 1st.

Under the new rate schedule, the minimum charge became $3 monthly instead of $3.50, with the number of kilowatt hours allowed remaining the same.

Billie Bryan, coöperative manager, said this step had been made possible by the coöperation and help of "our REA membership."

Pennsylvania

Seeks OK on Natural Gas Use

THE Philadelphia Gas Works Company last month asked the city council to authorize the use of natural gas for the first time in Philadelphia's history.

The request, made in a letter signed by Hudson W. Reed, president of the company which is lease operator of the city-owned gas plant, was supported by a communication from the Philadelphia Gas Commission, signed by F. J. Rutledge, secretary. The commission announced its approval of the company's proposal at a meeting held on June 24th.

The gas company also asked the council, in another communication, to authorize a $7,500,000 advance for general plant expansion in connection with use of natural gas.

According to Reed, the gas company proposes to enter into a 20-year contract with the Texas Eastern Transmission Corporation, present operator of the Big and Little Inch pipe lines, for up to 50,000,000 cubic feet of natural gas per day during the first year, starting in the fall of 1948. Copies of the proposed contract accompanied Reed's communication.

Gas Rate Increase Asked

THE state public utility commission on June 26th considered rate increases for large users requested by Consumers Gas Company, Reading, to go into effect August 1st unless set aside by the regulating agency.

Under the new tariff consumers must use gas for cooking and water heating to obtain special low rates for fuel used for home heating. Persons using gas for all fuel purposes would be required to guarantee a minimum revenue of $150 a year to receive low rates.

South Carolina

Account Change Not to Affect Rates

THE South Carolina Gas & Electric Company's reduction of $12,487,101 in its book evaluation of electric plant accounts will not affect rates in Columbia, the state public service commission said recently.

Director Walter C. Herbert of the electrical utilities division said that South Carolina had ordered the elimination of

that sum two years ago and had not considered those monies in ordering rates.

The Federal Power Commission announced on June 20th that it had approved accounting adjustments by the company, eliminating that sum from the book evaluation of its electric plant accounts.

Texas

Governor Approves Ratable Output

GOVERNOR Jester signed a bill recently designed to encourage a ratable take of gas in the Carthage field in east Texas. The measure authorizes the state railroad commission, after notice and public hearing, to determine:

1. The lawful market demand of gas to be produced from each reservoir during the following month.

2. The volume of gas which can be produced by each well from a reservoir during the following month without waste.

3. If no waste is occasioned thereby, to permit wells in a reservoir to be produced in excess of the monthly allowable, with certain limitations.

Excess production may be allowed provided that no well shall in any one month be permitted to produce in excess of twice its monthly allowable to produce at a rate in excess of 25 per cent of the daily producing capacity of the well as found by the commission. A well that has produced twice its allowable for six successive months shall be closed until its production and allowable are in balance.

The commission is required, on the first day of March and September of each year, to restrict production from all wells that are then overproduced to such fractional part of their monthly allowable as will bring the accumulated allowables and the accumulated monthly production in balance within the next six months.

Jester said the bill also was designed to help producers meet the seasonable gas demands of purchasers and transporters of gas from the Carthage field.

Utah

Gas Rate Reduction Proposed

A REDUCTION of $1,305,000 annually in gas rates charged by the Mountain Fuel Supply Company was proposed last month by Calvin L. Rampton, assistant attorney general acting as state public service commission counsel. Mr. Rampton's proposal was contained in his opening statement on a general rate case hearing against the company.

Mr. Rampton based his proposal—which would halve the company's annual net income after taxes—on a commission accounting study which set the original cost of the company's plant at $19,835,000. He said that the company should be entitled to a 5 per cent return on this investment.

Contending that any fair rate of return must take into account past losses as well as present profits, attorneys for Mountain Fuel Supply introduced evidence showing an average net income on investment of 2.4 per cent since 1929, when the natural gas service was inaugurated.

Exhibits showing the financial history of the company and its predecessor, the Western Public Service Corporation, were introduced over the objections of Mr. Rampton, who maintained that present rates should be based on current costs and investments, and that past losses or gains are immaterial to the present rate investigation.

Joseph Severn Jones, company counsel, said the proposed reduction "would seriously impair the financial responsibility" of the company.

The Latest Utility Rulings

Supreme Court Upholds Federal Commission Jurisdiction over Gas Sales

THE tact that a natural gas company sells its products to other companies for transportation to distant markets instead of transmitting the gas across state lines itself does not exempt it from regulation by the Federal Power Commission under the Natural Gas Act. This principle is established by the Supreme Court in upholding a decision in (1946) 65 PUR(NS) 1, 156 F2d 949.

The commission had fixed rates for sales of gas by the Interstate Natural Gas Company in Louisiana. Interstate produces gas, mingles it with gas purchased from other local producers, and sells it to Mississippi River Fuel Corporation, Southern Natural Gas Company, and the United Gas Pipe Line Company, to which gas is sold for the account of the Memphis Natural Gas Company. These companies direct it through compressor stations, where it is subjected to increased pressure and transported to other states. There is a continuous process without interruption for storage, processing, or any other purpose.

Such sales of gas, the court holds, are transactions in interstate commerce. Moreover, they are not exempted from the commission's power of regulation as part of "production or gathering" within the meaning of § 1(b) of the Natural Gas Act.

The sales in question, said the court, were quite as much in interstate commerce as they would have been had the pipes of Interstate Natural Gas Company crossed the state line before reaching the points of sale. There is nothing in the language of § 2(7) of the Natural Gas Act defining interstate commerce to suggest that Congress intended that sales consummated before gas crosses a state line should not be regarded as being "in" such commerce.

Concerning the exemption of production or gathering, the court noted the objectives of the Natural Gas Act. The basic purpose of Congress was said to be the occupation of the field of regulation excluded from state jurisdiction. Chief Justice Vinson, speaking for the court, said:

> In denying the Federal Power Commission jurisdiction to regulate the production or gathering of natural gas, it was not the purpose of Congress to free companies such as petitioner from effective public control. The purpose of that restriction was, rather, to preserve in the states powers of regulation in areas in which the states are constitutionally competent to act. . . . Clearly, among the powers thus reserved to the states is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern. It was the intention of Congress to give the states full freedom in these matters. Thus, where sales, though technically consummated in interstate commerce, are made during the course of production and gathering and are so closely connected with the local incidents of that process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the state of its regulatory functions, the jurisdiction of the Federal Power Commission does not attach. But such conflict must be clearly shown.

Interstate Natural Gas Co., Inc. v. Federal Power Commission et al.

Natural Gas Producers Not Subject to Commission Jurisdiction

An application by a partnership for a determination that it was not a natural gas company under the Natural Gas Act and that its proposed operations would not be subject to the jurisdiction of the Federal Power Commission was granted by that body. The partnership proposed to engage solely in the production and gathering of gas, and the sale of gas so produced and gathered, to Texas Eastern Transmission Corporation after dehydration in a plant which the partnership would construct.

The partnership would construct its own gathering lines connecting its wells with the main transmission line of Texas Eastern, at which point the gas would be metered and sold. There was no present affiliation between the partnership and any person engaged in natural gas production, gathering, or transmission. The partnership would not be engaged in the transportation of natural gas in interstate commerce, according to the commission's finding. *Re Whelan et al. (Docket No. G-899).*

Tax and Price Adjustment Clauses Disapproved

The Tennessee Gas & Transmission Company, after obtaining a temporary certificate to operate the "Big Inch" and "Little Big Inch" pipe lines, tendered an agreement with the Louisville Gas & Electric Company for the sale and delivery of natural gas. The Federal Power Commission, in its authorization, had provided that the pipe-line company should sell gas at a rate not to exceed 23 cents per thousand cubic feet.

The commission disapproved the contract rate as tendered because it contained tax and price adjustment clauses. It ordered these provisions stricken from the rate schedules and then approved the rates in the amended form.

The rate schedule provided that the purchaser of gas should pay the 23-cent rate and should also reimburse the seller in an amount equal to any future sales tax levied by the United States or the states specified in the contract, or any political subdivisions thereof.

The schedule further provided that either party might apply to the Federal Power Commission, or any other body or court having jurisdiction, for an increase or decrease in the price of gas in the event that the Federal Bureau of Labor Statistics' *Index of Wholesale Prices of All Commodities* varies by certain specified amounts from a specified base level.

The commission held that these clauses were irrelevant and unnecessary in the rate schedule. It also held that they were contrary to and violated the terms and conditions of its previous order. *Re Tennessee Gas & Transmission Co.*

Grouping of Municipalities in Metropolitan Area for Gas Rate Making

The Wisconsin commission permitted an increase in rates for service by the Milwaukee Gas Light Company. Higher operating expenses were found to warrant higher rates. A profit ratio of 6.13 per cent on the net property base had been estimated, but, after certain adjustments, the commission said, the profit ratio would more nearly approach 5.44 per cent.

The commission determined that the various municipalities served should be

grouped as a regional unit for rate-making purposes. From the standpoint of ease and economy of administration and good public relations, said the commission, the ideal situation would be one which provided for a single rate-making unit with uniform rates throughout. The commission continued:

> However, while cost of service is not necessarily the controlling factor, we think it reasonable and proper that such costs be given consideration in the determination of the number, area, and location of rate zones.

The metropolitan area of Milwaukee seemed logically to divide into two zones for rate-making purposes. The division resulted from grouping together those municipalities, or portions thereof, whose costs of service, including capital costs such as depreciation and taxes and estimated profit based on return on investment, fell within a relatively narrow range. Each municipality within a rate zone would provide a return on capital substantially equal to that provided by every other municipality within the same rate zone.

A fixed-charge type of rate was approved for all classes of service. The commission, in support of this type of rate, said:

> Among the more obvious advantages are: (1) It is simple—it is easy to understand and easy to administer; (2) it is promotional—by including nonvariable costs in the fixed charge it permits the quotation of lower rates for gas consumed; (3) it is nondiscriminatory—each customer makes an equal contribution toward meeting nonvariable customer costs, irrespective of the volume of consumption. Further, in this case it eliminates the inherent discrimination involved in the application of a minimum bill under which the customer is permitted varying amounts of service.

Re Milwaukee Gas Light Co. (2-U-2224, 2-U-2032, 2-U-2042, 2-U-2047, 2-U-2044).

Temporary Injunction against Rate Order Upheld

THE supreme court of Indiana affirmed a trial court order temporarily enjoining the Indiana commission from enforcing its order denying an application for a street railway emergency rate increase pending the conclusion of legal action for a permanent injunction against the rate order.

The commission, on appeal, insisted that the trial court's action amounted to a fixing of rates. This contention was rejected. The order, so the appellate court said, merely restrained the commission from interfering with the rates pending final determination of the rate case. The injunction order provided adequate protection for the utility's customers, it was noted. Furthermore, the court pointed out, if the temporary injunction were not granted and the final judgment favored the rate increase, the company would suffer irreparable injury.

The court disagreed with the commissions' contention that the true test of whether an emergency exists justifying a rate increase is whether the operating revenue of the utility can take care of the operating expenses at present rates until a permanent rate schedule could be determined. It ruled that orders affecting rates made by the commission are not immune from the constitutional requirement of due process of law, including the requirement of an adequate hearing to determine whether or not the utility is being compelled to operate under an unreasonable and confiscatory rate due to some emergency.

In conclusion it was said:

> There is no merit in appellant's contention that it was error for the trial court to consider the property of the appellee actually used and useful for the convenience of the public at its current fair cash value in determining whether the order appealed from is confiscatory. It is our opinion that in a hearing such as was had here the item of value is material but we could not expect the trial court to hold an extensive hearing on this particular question. Whether "fair value" is the end product of rate making

and not the starting point as seems to be determined in the case of Federal Power Commission *v.* Hope Nat. Gas Co. (1943) 320 US 591, 64 S Ct 281, 88 L ed 333, or whether the rate base upon which rates are fixed is determined by § 54-203, Burns 1933, is a matter to be decided in the final hearing of this cause. The appellee's evidence in this hearing would tend to prove that the rates now in effect yield no return on any valuation.

Public Service Commission et al. v. Indianapolis Railways, Inc. 72 NE2d 434.

Rate Increase Allowed Motor Carriers

A rate increase was allowed a group of motor carriers by the California commission because operation costs had increased. The commission said that in considering such an increase the current rate and not a long canceled schedule should be the starting point for revision of rates.

The commission did not believe that a definite duration should be placed on the revised schedule when it did not appear that the conditions requiring the revision would be relieved in the immediate future. *Re Motor Truck Asso. of Southern California (Decision No. 39647, Case No. 4121).*

Discontinuance of Water Service Disapproved

The Wisconsin commission, after investigating a customer's complaint against a threatened abandonment of water service, ordered that service be continued.

A municipality which owned the water utility desired to annex the property of the customer to city territory. The customer opposed annexation. The city then threatened to discontinue service under a provision in the service contract, made about fifteen years earlier, permitting discontinuance on ninety days' notice.

The commission said that the contract provision was invalid and unenforceable and added:

> Any such provision in a contract between any city in its capacity as a public utility and its customers is contrary to public policy as being violative of the fundamental and statutory public obligation of the city as a public utility, to continue any public utility service once it is undertaken, unless the abandonment thereof is authorized by public authority.

Re City of Milwaukee (2-U-2329).

Hearing Not Needed for Restoration of Prewar Service

The circuit court of Baltimore city upheld an order of the commission restoring a prewar schedule of bus service. Independent operators had objected because a hearing had not been held.

The Director of Defense Transportation, in 1942, had ordered the Baltimore Transit Company to suspend operation of busses on one route. The bus company filed with the commission a tentative schedule to comply with this direction. The commission stated that the schedule was being filed as an emergency and was subject to revision under the present circumstances. A new schedule of operation was then put into effect by the independent operators, and for a time they enjoyed a monopoly of operations on the route.

The state commission passed an order

modifying its rules and regulations to the extent necessary to permit operation of the independent busses during the war emergency and for such time thereafter as the commission might direct. This order was passed without a hearing, to continue during the war emergency, and the commission reserved the right to make changes as might be required.

Later the Office of Defense Transportation modified its order so as to permit resumption of operations by the Baltimore Transit Company. The state commission, on May 16, 1947, directed that its previous order be rescinded and all motor vehicles should be operated on the schedule in effect immediately prior to the entry of the emergency order.

The court held that this order was clearly within the power and authority reserved to the commission by the terms of its previous order. The independent operators, it was said, fully understood the war emergency and that the transit company would reënter the field when the emergency should no longer exist. These operators would, however, be entitled to a hearing before the commission could authorize departure from the schedules in effect prior to the emergency. *Drimal et al. v. Maryland Public Service Commission et al.*

Commission Denial of Radio License Sustained

The United States Court of Appeals for the District of Columbia approved the action of the Federal Communications Commission in denying a broadcasting company's application for authority to construct and operate a radio station where the officers of the company, in testifying at the hearing on the application, were guilty of misrepresentation.

The court, after commenting on the evasive testimony offered at the hearing, ruled that the commission's action was not arbitrary, capricious, or without substantial foundation.

The court found no error in the commission's consideration of phonograph recordings of conversations between the officers of the station made by one of them without the knowledge of the others.

The commission was correct, the court ruled, in admitting this evidence to impeach a witness at the hearing on the license application. Such evidence, it was held, may be admitted where adequate foundation is laid for its introduction. *Calumet Broadcasting Corp. v. Federal Communications Commission, 160 F2d 285.*

Other Important Rulings

In denying an air carrier's application for a certificate to render an extensive carrier service, the Pennsylvania commission pointed out that it would not approve an application for operating authority which went far beyond the territorial limits of the proofs offered at the hearing on the application. *Re Triple Cities Airways, TCA, Inc. (Application Docket No. 67526, Folders 2, 3, 4, and 5).*

The supreme court of Arkansas reversed the conviction of a cab operator charged with operating without a certificate where the record indicated that the commission had disclaimed jurisdiction over taxicabs and had made no rules and regulations regarding their operation, so that the cab operator could not have procured a certificate had he applied for one. *Marshall v. State, 200 SW2d 491.*

A contract action by a bus company against another passenger carrier was dismissed by the United States Circuit

Court of Appeals on the ground that the pooling agreement which was the basis for the action was void in that it provided for a division of traffic, profits, and income in violation of the Sherman Antitrust Act. *Norfolk Southern Bus Corp. v. Virginia Dare Transp. Co., Inc. 159 F2d 306.*

The Michigan commission's dismissal of a complaint by a lumber company against a railroad's termination of a lease of railroad-controlled property was affirmed by the state supreme court. The court pointed out that the property involved was nonpublic service property over which the railroad had absolute dominion free from commission regulation. *Bohn Lumber Products Co. v. Michigan Pub. Service Commission, 26 NW2d 875.*

The supreme court of Mississippi reinstated a commission order denying a motor carrier certificate after the circuit court had reversed it in part. The court ruled that the record did not indicate that the commission order was unsupported by substantial evidence, arbitrary, or unlawful; therefore it was not reviewable by the court. *Tri-State Transit Co. of Louisiana, Inc. v. Gulf Transport Co. 29 S2d 825.*

In approving a gas company's application for authority to increase rates, the Michigan commission allowed a fuel adjustment for residential service on the ground that the wide variation in present-day fuel costs made such adjustments necessary. *Re National Utilities Co. (D-2448-47.2).*

In affirming a lower court judgment dismissing a motor carrier's action to restrain the issuance of a certificate to a competitor, the New Mexico Supreme Court ruled that the decision of the commission, if not unlawful or unreasonable, cannot be attacked. The fact that the court might have arrived at a different conclusion was not considered a controlling factor. *New Mexico Transp. Co. et al. v. State Corporation Commission et al. 178 P2d 580.*

The appellate division of the New York Supreme Court dismissed a motor carrier's claim that its pooling contract with another carrier was void, unenforceable, and contrary to the Sherman Antitrust Act. The court ruled that a pooling arrangement is not *per se* a violation of the act and some showing must be made that the arrangement results in a monopoly. *Swezy (H.E.) & Son Motor Transp., Inc. v. Reich Bros. Long Island Motor Freight, Inc. 69 NY Supp2d 426.*

A proceeding before the Georgia commission requiring a telephone company to show cause why its service should not be improved resulted in an order reducing the telephone rates one-half, so that they would be commensurate with the character and quality of telephone service being rendered. *Re Gissendaner (File No. 19339, Docket No. 8510-A).*

The Civil Aeronautics Board granted an air carrier's application for authority to suspend service to a resort area during the off season, on a showing that continued operation during such period would result in a substantial financial loss. *Re Western Air Lines, Inc. (No. E-610).*

The Civil Aeronautics Board, in considering an air carrier's application for a certificate, found nothing adverse to the public interest in the fact that another carrier chartered planes with crews for use in the air transport service offered by the applicant, or in the fact that the president of another carrier was employed by the applicant as director of its international operations. *Re Philippine Air Lines, Inc. (Docket No. 2776).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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VOLUME 68 PUR(NS) NUMBER 5

Points of Special Interest

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Titles and Index

TITLES

INDEX

NEW YORK COURT OF APPEALS

Staten Island Edison Corporation

v.

Milo R. Maltbie et al.

— NY —, — NE2d —
May 22, 1947

APPEAL, *by permission of the appellate division of the Supreme Court in the third judicial department upon certified questions, from a judgment, in favor of plaintiff (1945) 270 App Div 55, 62 PUR(NS) 33, 58 NYS2d 818, upon an order of said court which reversed, on the law and the facts, a judgment (1945) — Misc —, 60 PUR(NS) 362, 57 NYS2d 515, in favor of defendants, entered in Albany county upon an order of the court at special term (Ellsworth, J.) granting a motion by defendants for a dismissal of the complaint upon the ground that it did not state facts sufficient to constitute a cause of action. By said order the appellate division reversed (1) another order of the Supreme Court at special term (Ellsworth, J.), entered in Albany county, which denied a motion by plaintiff to restrain defendants from taking any action to enforce orders of the Public Service Commission dated June 19, 1945, and May 27, 1943, and (2) an order of special term (Ellsworth, J.), entered in Albany county, which denied a motion by plaintiff to strike from the answer certain affirmative defenses. The order appealed from further provided that such defenses be stricken and that plaintiff's motion for a temporary injunction against the enforcement of the Commission's order of June 19, 1945, be granted on condition that plaintiff file an appropriate bond.*

Injunction, § 51 — Motion to dismiss complaint — Sufficiency of allegations.

1. Allegations in a complaint for injunction against a rate order of the Commission must for the purpose of pleading be taken at face value on a motion to dismiss the complaint, p. 131.

Return, § 89 — Confiscation — Electric utility.

2. Allegations, in a suit by an electric company to obtain an injunction against a rate order, showing returns of 3.07 per cent on depreciated cost and 2.42 per cent on reasonable value clearly support a claim of confiscation, p. 131.

Injunction, § 51 — Sufficiency of complaint — Allegation of confiscation.

3. Allegations that a Commission rate order results in confiscation of property in violation of the constitutional right to receive a fair return upon

the value of property devoted to public use, specifically alleging property cost, reproduction cost, reasonable value, maximum rate of return under prescribed rates, and that the rates will not afford a reasonable return on such costs or value, sufficiently allege confiscation in violation of a public utility's constitutional rights, p. 131.

Injunction, § 16 — When proper remedy — Adequacy of certiorari — Review of rate order.

4. Whether an electric utility is entitled to maintain an action for injunction against a rate order and the sufficiency of allegations in the complaint to warrant injunctive relief depend upon the adequacy or inadequacy of the remedy available to the company by a certiorari order, under Article 78 of the Civil Practice Act, to review rate orders of the Commission, p. 131.

Appeal and review, § 49 — Conclusiveness of decision — Commission rate order — Confiscation.

5. A determination of the Commission upon any question of fact is not open to review in a certiorari proceeding under Article 78 of the Civil Practice Act to review a rate order of the Commission alleged to be confiscatory, p. 131.

Constitutional law, § 15 — Due process — Judicial review.

6. Where constitutional rights of liberty or property are involved, due process requires independent judicial determination of the constitutional question in the courts, p. 131.

Appeal and review, § 4 — Constitutional rights — Limitation on judicial review.

7. The remedy by certiorari proceedings to review a rate order of the Commission is inadequate in the protection of constitutional rights and is lacking in due process when under established law the court cannot independently consider the question of confiscation, p. 131.

Injunction, § 28 — Against rate reduction order — Allegation of confiscation — Availability of certiorari.

8. The state supreme court as a constitutional court may entertain an action by a public utility company for an injunction against a rate order of the Commission, alleged to be confiscatory, when the statutory remedy by certiorari is inadequate, p. 131.

Courts, § 4 — Absence of legislative power — Ruling on scope of review.

9. A court lacks power to broaden the scope of review in certiorari proceedings so as to permit review of the question of confiscation on the facts as well as the law, since, if such change is desirable, the legislature and not the court should make it, p. 135.

(Desmond, Loughran, and Fuld, JJ., dissent.)

Appearances: Philip Halpern, George H. Kenny, and Samuel R. Madison, for appellants; Charles E. Murphy, Corporation Counsel (Andrew Bellanca and John Suglia of counsel), for city of New York, amicus curiae, in support of appellants' position; Jackson A. Dykman, Edward B. Naylon, Royal F. Shepard, and George Foster, Jr., for respondent.

Thatcher, J.: The Public Service Commission appeals pursuant to leave granted by the appellate division, third department, upon certified questions of law, from an order of the ap-

pellate division and a judgment thereon which reversed orders of the special term, Albany county, granting defendant's motion for judgment on the pleadings and dismissing the complaint. The appellate division granted a temporary injunction against enforcement of the Commission's order prescribing permanent rates and struck out four separate defenses in defendant's answer. The following questions were certified:

"1. Is the plaintiff entitled to maintain this action?

"2. Does the complaint state facts sufficient to constitute a cause of action?"

In a prior suit between the same parties, brought to enjoin temporary rates established by the Commission's order of May 27, 1943, we affirmed a dismissal of the complaint, Staten Island Edison Corp. v. Maltbie (1943) 267 App Div 72, 52 PUR NS 166, 45 NYS2d 337, aff'd (1944) 292 NY 611, 55 NE2d 376. The present action is a plenary action in equity to enjoin the enforcement of the Commission's order of May 27, 1943, prescribing temporary rates and of the Commission's final order of June 19, 1945, prescribing final rates to be charged on and after July 1, 1945.

[1-3] Allegations of ultimate fact held sufficient to show confiscation in Prendergast v. New York Teleph. Co. 262 US 43, 67 L ed 853, PUR1923C 719, 43 S Ct 466, are substantially followed in the complaint. Plaintiff alleges that the Commission's orders result in confiscation of its property in violation of its constitutional right to receive a fair return upon the value of its property devoted to public use, specifically alleging the cost of its property devoted to such use within the state, the cost of its reproduction, its reasonable value, the maximum rate of return which the rates prescribed will provide, measured in relation to the cost and also in relation to the fair and reasonable value of its property, and that such rates will not afford a reasonable return on such cost or value. These allegations, which for the purpose of pleading must be taken at face value, show returns of 3.07 per cent on depreciated cost and 2.42 per cent on reasonable value and clearly support the claim of confiscation. Prendergast v. New York Teleph. Co. *supra.* Thus the complaint sufficiently alleges confiscation in violation of plaintiff's constitutional right—a question which of course may be determined only after the proofs are in. Municipal Gas Co. v. Public Service Commission, 225 NY 89, 98, PUR 1919C 364, 121 NE 772.

[4-8] The questions certified involve plaintiff's right to maintain the action in equity and the sufficiency of the allegations to warrant injunctive relief. Each of these questions depends upon the adequacy or inadequacy of the remedy available to plaintiff by a certiorari order under Art 78 of the Civil Practice Act to review the rate orders of the Public Service Commission.

In People ex rel. Consolidated Water Co. v. Maltbie (1937) 275 NY 357, 20 PUR NS 375, 9 NE2d 961, appeal dismissed (1938) 303 US 158, 82 L ed 724, 22 PUR NS 136, 58 S Ct 506, we held (275 NY at pp. 369, 370, 20 PUR NS at p. 382): ". . . Upon the hearing of an order of certiorari to review a determination of the Commission, the jurisdic-

tion and power of the appellate division are defined and limited by § 1304 [now § 1296] of the Civil Practice Act. These powers do not include an independent consideration by the court of any question of fact."

This was a rate case and we declared, in regard to the scope of our review (275 NY at p. 366): ". . . In this court the determination of the Commission upon any question of fact is not open to review. We may reverse a decision or annul a determination only for erroneous determination of a question of law, and after careful consideration of the appellant's argument, we find no errors there. Upon every point where the determination of the Commission is challenged we find that there is evidence to support the conclusion of the Commission and room for the exercise of choice."

This is the established rule in certiorari proceedings to review rate orders of the Public Service Commission and it is applied generally in certiorari proceedings to review determinations of administrative boards. People ex rel. New York & Q. Gas Co. v. McCall, 219 NY 84, PUR1917A 553, 113 NE 795, Ann Cas 1916E 1042, affd. 245 US 345, 62 L ed 337, PUR1918A 792, 38 S Ct 122; Niagara Falls Power Co. v. Water Power & Control Commission (1935) 267 NY 265, 278, 196 NE 51; Weber v. Cheektowaga (1940) 284 NY 377, 380, 31 NE2d 495; Newbrand v. Yonkers (1941) 285 NY 164, 177, 178, 33 NE2d 75; Miller v. Kling (1943) 291 NY 65, 50 NE2d 546; Bolani v. O'Connell (1946) 296 NY 871, — NE2d —.

Faced with this limitation upon the jurisdiction and power of the appellate division in certiorari proceedings to review a determination of the Commission, and seeking an independent consideration by a court of the facts upon which its claim of constitutional right is predicated, plaintiff has refrained from instituting certiorari proceedings under the Civil Practice Act and has brought this plenary action in equity to enjoin confiscation of its property used and useful in the public service, claiming that as a matter of constitutional right it is entitled to a fair opportunity of submitting the issue of confiscation to a judicial tribunal for determination upon its own independent judgment as to both law and facts. Ohio Valley Water Co. v. Ben Avon, 253 US 287, 64 L ed 908, PUR1920E 814, 40 S Ct 527.

When the Consolidated Water Co. Case (*supra*) went to the Supreme Court of the United States, the water company sought to raise this question. The Supreme Court held (303 US at pp. 159, 160): "Appellant contends that it is entitled to the exercise of the independent judgment of a court as to the law and the facts with respect to the issue of confiscation and that such a review has not been accorded because of the limitations imposed by the state practice in certiorari proceedings. (*Supra*) 275 NY at p. 370. Appellant has no standing to raise this question as appellant itself sought review by certiorari and has not invoked the plenary jurisdiction of a court of equity and it does not appear that this remedy is not available under the state law."

We are now confronted with that question.

The Ben Avon Case, *supra*, has never been overruled; on the contrary, the principle that, where constitutional rights of liberty or property are in-

volved due process requires independent judicial determination of the constitutional question in the courts, has been reaffirmed. St. Joseph Stock Yards Co. v. United States (1936) 298 US 38, 51, 52, 80 L ed 1033, 14 PUR NS 397, 56 S Ct 720; Crowell v. Benson (1932) 285 US 22, 46, 60, 76 L ed 598, 52 S Ct 285; Baltimore & O. R. Co. v. United States (1936) 298 US 349, 368, 369, 80 L ed 1209, 56 S Ct 797; Kansas State Corp. Commission v. Wichita Gas Co. (1934) 290 US 561, 569, 78 L ed 500, 1 PUR NS 433, 54 S Ct 321.

In Phillips v. Commissioner of Internal Revenue (1931) 283 US 589, 600, 75 L ed 1289, 51 S Ct 608, Brandeis, J., writing for the court, stated the general rule regarding administrative findings and the exception as follows: ". . . Save as there may be an exception for issues presenting claims of constitutional right, such administrative findings on issues of fact are accepted by the court as conclusive if the evidence was legally sufficient to sustain them and there was no irregularity in the proceedings."

See, also, Tagg Bros & Moorhead v. United States (1930) 280 US 420, 443, 74 L ed 524, 50 S Ct 220.

An analogy is found in the right to judicial determination on habeas corpus of a claim of citizenship when one is held for deportation under the immigration laws of the United States Ng Fung Ho v. White, (1922) 259 US 276, 66 L ed 938, 42 S Ct 492.

There would indeed be a very drastic limitation upon the constitutional powers of the supreme court of the state if it may not enjoin an unconstitutional deprivation of property because of an administrative determination of constitutional right supported by administrative findings of fact believed to be wrong upon a fair consideration of the record. The remedy by certiorari proceedings being thus limited is inadequate in the protection of constitutional right and, in view of the decisions of the Supreme Court of the United States, is lacking in due process. Under these circumstances the supreme court of New York as a constitutional court may entertain an action for an injunction, the statutory remedy by certiorari being inadequate.

We are constrained to conclude that the plaintiff is entitled to maintain this action and that the complaint states facts sufficient to constitute a cause of action.

In reaching this conclusion we are not unmindful of the arguments advanced on grounds of convenience, well stated by Foster, J., in the court below, 270 App Div 55, 62 PUR NS 33, 41, 58 NYS2d 818: "Obviously this is an important question in the field of public utility regulation. It is a simple matter to allege confiscation in any rate matter, and if such an allegation is sufficient to invoke the jurisdiction of equity then the way is open for separate trials of the same issues in every rate case; first before the Commission, and later at an equity term of the Supreme Court. Something rather extraordinary is required to justify a procedure so protracted and cumbersome."

We find no compelling necessity for a trial de novo of every rate case in which confiscation is claimed. The illegality in such cases is confiscation or deprivation of property without due process of law. The legality of the rate must primarily depend upon the

proceedings before the Commission, and the record of those proceedings will of necessity be before the trial court since the statute authorizes determination in the first instance by the Commission, and the courts may not properly consider the question without knowledge of the administrative record. Railroad Commission v. Rowan & N. Oil Co. (1940) 310 US 573, 84 L ed 1368, 60 S Ct 1021; Manufacturers R. Co. v. United States (1918) 246 US 457, 489, 490, 62 L ed 831, 38 S Ct 383. This appears to be the practice when injunction suits such as this are brought in the Federal courts. We see no reason for departing from that practice in the trial of this action. We need not now consider under what circumstances, if any, the court may be justified in receiving additional proofs or newly discovered evidence.

We find nothing inconsistent with such a practice in the oil and gas proration cases: Thompson v. Consolidated Gas Utilities Corp. (1937) 300 US 55, 81 L ed 510, 57 S Ct 364; Railroad Commission v. Rowan & N. Oil Co. *supra;* Railroad Commission v. Rowan & N. Oil Co. (1940) 311 US 570, 85 L ed 358, 61 S Ct 343, or in the cases arising under the Federal Natural Gas Act: Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 86 L ed 1037, 42 PUR NS 129, 62 S Ct 736; Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 88 L ed 333, 51 PUR NS 193, 64 S Ct 281.

The power company cases arose upon petitions to review orders of the Federal Power Commission under § 19b of the Natural Gas Act, 15 US CA § 717r(b). In discussing the scope of the review in these cases, Chief Justice Stone, writing for the court in Federal Power Commission v. National Gas Pipeline Co. *supra,* said (315 US at p. 585, 42 PUR NS at p. 137):

"By long-standing usage in the field of rate regulation, the 'lowest reasonable rate' is one which is not confiscatory in the constitutional sense. [Citations.] Assuming that there is a zone of reasonableness within which the Commission is free to fix a rate varying in amount and higher than a confiscatory rate [Citations.], the Commission is also free under § 5(a) to decrease any rate which is not the 'lowest reasonable rate.' It follows that the congressional standard prescribed by this statute coincides with that of the Constitution, and that the courts are without authority under the statute to set aside as too low any 'reasonable rate' adopted by the Commission which is consistent with constitutional requirements."

The opinion then proceeds to a full review of the facts upon which the Commission made its determination leading to the conclusion that such determination was consistent with constitutional requirements. In the oil and gas proration cases, *supra,* the proceedings were by injunction in the Federal courts.

In none of these decisions was the right to try the issue of confiscation disputed. Indeed that was the judicial process pursued in each one of these cases. The opinions are helpful in showing the deference with which a court should consider the findings and conclusions of an expert administrative Commission. No doubt a court of

equity in this state will be largely influenced by the practice which prevails in the Federal courts.

[9] Counsel for the Commission have suggested that the case is of such compelling importance that if judicial review of the question of confiscation is a constitutional requirement, we should broaden the scope of review in certiorari proceedings so as to permit review of that question on the facts as well as the law. This, of course, we may not do in view of the established limitations on such proceedings to which we have referred. If such changes are desirable, the legislature, but not the courts, should make them.

The order should be affirmed, with costs, and each of the questions certified answered in the affirmative.

DESMOND, J., dissenting: Plaintiff is a New York State Corporation doing an intrastate business in the production and sale of electric power. After hearings and other appropriate proceedings before it, defendant Public Service Commission made and promulgated its order fixing permanent rates to be charged by plaintiff. Plaintiff thereupon brought the present suit in equity to enjoin the enforcement of the order. The complaint herein asserts that the rates so established by defendant Commission are so low as to be confiscatory of plaintiff's property and thus unlawful under the Fourteenth Amendment to the United States Constitution and Article I of the Constitution of this state. The Commission moved to dismiss the action on the ground that plaintiff's only recourse to the courts is by way of a petition for an order of certiorari under Art. 78 of the Civil Practice Act, and that no suit in equity lies to contest Commission-fixed rates. Plaintiff's retort is that, while certiorari is available, it is not a constitutionally adequate remedy. In certiorari proceedings, plaintiff points out, there would be no new trial and findings by the court on the disputed questions of fact as to value, etc., but only a review by the court of the Commission's findings, to see if they were reasonable and supported by substantial evidence. People ex rel. New York & Q. Gas Co. v. McCall, 219 NY 84, 90, 91, PUR1917A 553, 113 NE 795, Ann Cas 1916E 1042; People ex rel. Consolidated Water Co. v. Maltbie (1937) 275 NY 357, 370, 20 PUR NS 375, 9 NE2d 961; Stork Restaurant v. Boland (1940) 282 NY 256, 26 NE2d 247; Miller v. Kling (1943) 291 NY 65, 50 NE2d 546. Citing Ohio Valley Water Co. v. Ben Avon, 253 US 287, 64 L ed 908, PUR1920E 814, 40 S Ct 527, for authority, plaintiff has successfully maintained herein that, having adequately alleged unconstitutional confiscation of its property, its absolute right to procedural due process can be satisfied by nothing less than a separate, independent trial de novo by a court, of the same questions already litigated at length before the Commission. If that be the law, a good many long, involved rate cases will have to have two trials each, and the first trial—before the Commission—will be rather a footless and futile performance. As the dissenting opinion in the appellate division, *supra*, 62 PUR NS at p. 41, 58 NYS2d at p. 826, remarked: "Something rather extraordinary is required to justify a procedure so protracted and cumbersome." "State regulation of utility

rates" would be, says Corwin's "The Constitution and What It Means Today," "rendered largely farcical by the idea that the courts ought to retry from the ground-up administrative findings of fact" ([9th ed.] 1947, p. 171).

Let us at once dispose of the idea that the present decision merely gives plaintiff its choice between two established modes of attacking, in the courts, Commission-fixed rates. At a later point in this opinion we will deal more extensively with the historical background of rate review in New York, but we point out now that the decision below in this case was the first in any appellate court in this state allowing a public utility corporation to try out anew, in a separate suit, the factual questions, as to value, return, etc., already submitted to, and determined by, the Commission to which the legislature has delegated sole authority in that field. Such cases as Municipal Gas Co. v. Public Service Commission, 225 NY 89, PUR1919C 364, 121 NE 772, have to do with rates directly fixed by the legislature itself, to which certiorari review is inapplicable.

If it were not for the Ben Avon Case, *supra,* and the structure of argument built thereon, we could dispose of plaintiff's suit summarily, for it is settled in the decisions of this court that no such bill in equity lies. Certiorari is the remedy provided for reviewing the Public Service Commission's rate orders. People ex rel. Central Park, N. & E. River R. Co. v. Willcox (1909) 194 NY 383, 87 NE 517. In such a certiorari proceeding there is no second trial of the facts but an examination of the legality of the order—that is, an inquiry by the court as to whether the order is arbitrary or capricious or without support of substantial evidence. People ex rel. New York & Q. Gas Co. v. McCall, *supra.* In other words, it is the same sort of review afforded by our courts as to determination by other administrative agencies. Miller v. Kling, *supra.* The contention that a rate is confiscatory is, like every other question of law, fully litigable in such proceedings. People ex rel. New York & Q. Gas Co. v. McCall, *supra.* Such was the New York law before the Ben Avon Case, and this court saw nothing in the Ben Avon Case to compel a change in the rule. People ex rel. Consolidated Water Co. v. Maltbie, *supra.* In both the New York & Queens Case and the Consolidated Water Case, *supra,* there were claims of confiscation, but in each instance this court held that certiorari was a sufficient remedy. Both those cases went thereafter to the Supreme Court, 245 US 345, 62 L ed 337, PUR 1918A 792, 38 S Ct 122, and (1938) 303 US 158, 82 L ed 724, 22 PUR NS 136, 58 S Ct 506, but the point we are here passing on was not decided by that tribunal, in either case. Both were certiorari cases and in neither did this court say in so many words that an equity suit might not have been brought to establish that the rates were confiscatory. But that was the plain meaning of Judge Lehman's language in the Consolidated Water Case, *supra,* at p. 370 of 275 NY, at p. 382 of 20 PUR NS:

"It is true that a determination by a legislative or administrative body on a question of fact is not binding upon a court where the power of the legislative or administrative body is challenged cf. Ohio Valley Water Co. v. Ben Avon, 253 US 287, 64 L ed 908, PUR

1920E 814, 40 S Ct 527; Crowell v. Benson (1932) 285 US 22, 76 L ed 598, 52 S Ct 285; St. Joseph Stockyards Co. v. United States (1936) 298 US 38, 80 L ed 1033, 14 PUR NS 397, 56 S Ct 720. Even so, where the state gives to an administrative body power to determine questions of fact by judicial inquiry subject to review in the courts, no Federal rights are denied by its order unless 'there was such a want of hearing or such arbitrary or capricious action on the part of the Commission as to violate the due process clause of the Constitution.' Except in the form of judicial review the courts do not examine the question whether the evidence preponderates for or against a conclusion. People ex rel. New York & Q. Gas Co. v. McCall, *supra,* 245 US at p. 348."

That language means that the New York method of court scrutiny of rate orders is by certiorari proceedings and that the scope of our certiorari review adequately meets Federal constitutional requirements, including the requirements of the Ben Avon Case, *supra.* It is impossible to read it as meaning anything different.

Standing on those prior decisions of ours, we could stop at this point and vote for a dismissal of the present suit. But the prominence given the Ben Avon Case, *supra,* in the briefs here, and a desire to pay due attention to the decisions of the Supreme Court, prompts some further discussion. The Ben Avon opinion does say that, in rate cases "if the owner claims confiscation of his property will result, the state must provide a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts; otherwise the order is void because in conflict with the due process clause, Fourteenth Amendment" (253 US at p. 289, PUR1920E at p. 816). On its face, in its setting and against its particular factual background, that quoted language does seem to mandate a full new trial in the courts of facts disputed before the Commission, and it has been frequently cited by judges and commentators as meaning just that. Whether or not it has been (implicitly but not explicitly) overruled by later cases in the same court. See Railroad Commission v. Rowan & N. Oil Co. (1940) 310 US 573, 84 L ed 1368, 60 S Ct 1021; (1940) 311 US 570, 85 L ed 358, 61 S Ct 343; Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 86 L ed 1037, 42 PUR NS 129, 62 S Ct 736, and Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 88 L ed 333, 51 PUR NS 193, 64 S Ct 281, we need not say. However, the so-called "Ben Avon rule" has been, to put it most mildly, weakened by those more recent decisions of the same court (see, as to the "vitality" of the Ben Avon doctrine, 42 American Jurisprudence, 222). For instance, in Railroad Commission v. Rowan & N. Oil Co. *supra,* the Texas Railroad Commission had, pursuant to a Texas statute, set the amount of crude oil permitted to be produced daily from an oil field and had prorated that production among the wells in that field. The oil company brought suit in the Federal courts, asserting that the proration resulted in an unconstitutional taking of its property rights in its own wells. The Federal district court conducted a trial de novo, at the conclusion of which it held that the Commission's order did result

in such confiscation, and granted an injunction. The circuit court affirmed the decree. The United States Supreme Court reversed, disregarded the new findings and went back to the Railroad Commission's findings, with these comments:

"Nothing in the Constitution warrants a rejection of these expert conclusions. Nor, on the basis of intrinsic skills and equipment, are the Federal courts qualified to set their independent judgment on such matters against that of the chosen state authorities. For its own good reasons Texas vested authority over these difficult and delicate problems in its Railroad Commission. Presumably that body, as the permanent representative of the state's regulatory relation to the oil industry equipped to deal with its ever-changing aspects, possesses an insight and aptitude which can hardly be matched by judges who are called upon to intervene at fitful intervals. Indeed, we are asked to sustain the district court's decree as though it derived from an ordinary litigation that had its origin in that court, and as though Texas had not an expert Commission which already had canvassed and determined the very issues on which the court formed its own judgment. For it appears that the court below nullified the Commission's action without even having the record of the Commission before it. When we consider the limiting conditions of litigation—the adaptability of the judicial process only to issues definitely circumscribed and susceptible of being judged by the techniques and criteria within the special competence of lawyers—it is clear that the due process clause does not require the feel of the expert to be supplanted by an independent view of judges on the conflicting testimony and prophesies and impressions of expert witnesses." (311 US at pp. 575, 576.)

The statement just quoted is fundamentally at variance with the holding now being made by this court in the present case: that the Federal Constitution requires that whenever a utility corporation alleges that a rate is confiscatory, the corporation is entitled to bring an equity suit and demand new, independent findings by the court as to whether or not the rate is reasonable and fair. And how are we to reconcile with the majority opinion in the present case the Supreme Court holdings, in Federal Power Commission v. Natural Gas Pipeline Co. *supra,* and Federal Power Commission v. Hope Nat. Gas Co. *supra,* that a Commission is not bound to the use of any single formula or combination of formulae in determining rates, that whenever a Commission rate order is challenged in the courts the question is whether that order viewed in its entirety meets legal requirements, that the result reached, not the method employed, is controlling as to the legality of the rate, that it is not the theory but the impact of the rate order which counts, and, finally, that, if the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry is at an end.

This court, itself, after the Ben Avon decision, *supra,* again tested our certiorari procedures by that case's rules and found that they stood the test. This court thought then that due process does not require that any fact be tried out twice in separate tribunals before a binding result be reached. The property owner who charges confisca-

tion is given a court determination of that issue, but the issue is decided by the court on the reasonable factual holdings made by another competent tribunal, as to values and other items basic to rate making. That special tribunal created and equipped by the legislature for the special task has already investigated the facts and arrived at an appropriate rate. All of that is then examined by a court to see if the owner's rights are being violated. A brief look at the development of the law of rate making will show, we think, why the courts of New York hold that this system lacks no element of due process.

No state, under the guise of regulating fares and tariffs, may require a utility company to perform its services without appropriate reward. Railroad Commission Cases (Stone v. Farmers' Loan & Trust Co. [1886]) 116 US 307, 331, 29 L ed 636, 6 S Ct 334, 388, 1191. Accordingly, the rates charged by the owners of private property devoted to public utility uses may be regulated by the states in the exercise of their police power, but a state cannot take away an owner's right to reasonable compensation for such use. Munn v. Illinois (1877) 94 US 113, 24 L ed 77. It follows that any prescription, by a state, of rates too low for just compensation to the public utility corporation is confiscatory and offends against the Fourteenth Amendment's requirement of due process. Smyth v. Ames (1898) 169 US 466, 526, 42 L ed 819, 18 S Ct 418. Likewise violative of the due process mandate would be a state statute which would attempt to give finality and conclusiveness to rates fixed by a state Public Service Commission without provision for any judicial inquiry as to their reasonableness. Chicago, M. & St. P. R. Co. v. Minnesota (1890) 134 US 418, 458, 33 L ed 970, 10 S Ct 462, 702. An avenue of judicial approach there must be. Rate making by a state government is, of course, legislative, not judicial, in general character. Prentis v. Atlantic Coast Line Co. (1908) 211 US 210, 226, 53 L ed 150, 29 S Ct 67; Helfrick v. Dahlstrom Metallic Door Co. (1931) 256 NY 199, 207, 176 NE 141, since it is an exercise of the police power. Buffalo East Side R. Co. v. Buffalo Street R. Co. (1888) 111 NY 132, 19 NE 63, 2 LRA 384, and its regulations are to be applied in the future. Norwegian Nitrogen Products Co. v. United States (1933) 288 US 294, 318, 319, 77 L ed 796, 53 S Ct 350. But while the setting of rates is legislative, the determination of whether or not a particular rate works out to an illegal forfeiture of private property, is a judicial inquiry. See People ex rel. Schau v. McWilliams (1906) 185 NY 92, 95, 96, 77 NE 785. From all of that there follows the rule of constitutional interpretation that adequate judicial procedures for such inquiries must be made available by the rate-fixing state. Chicago, M. & St. P. R. Co. v. Minnesota, *supra;* Smyth v. Ames, *supra.* This procedural due process, however, does not call for any particular mode of court activity. The right to due process does not give a citizen a vested right to any one form of procedure. It is enough that he be afforded access to the courts for protection of his property. Truax v. Corrigan (1921) 257 US 312, 332, 66 L ed 254, 42 S Ct 124, 27 ALR 375; Hurtado v. California (1884) 110 US 516, 536, 28

L ed 232, 4 S Ct 111. Due process, as applied to a judicial inquiry, means a course of legal proceedings according to established rules and procedures for protecting and enforcing private rights. Pennoyer v. Neff (1878) 95 US 714, 733, 24 L ed 565; Scott v. McNeal (1894) 154 US 34, 46, 38 L ed 896, 14 S Ct 1108. It means the following of forms of law appropriate to the case and just to the parties. Hagar v. Reclamation District No. 108 (1884) 111 US 701, 708, 28 L ed 569, 4 S Ct 663. "The due process clause of the Fourteenth Amendment requires that action by a state through any of its agencies must be consistent with the fundamental principles of justice and liberty which lie at the base of our civil and political institutions which not infrequently are designated as 'the law of the land.'" Buchalter v. New York (1943) 319 US 427, 429, 87 L ed 1492, 63 S Ct 1129. In the end, it connotes procedure "having the sanction of settled usage." People v. Adirondack R. Co. (1899) 160 NY 225, 236, 54 NE 689, affd. (1900) 176 US 335, 44 L ed 492, 20 S Ct 460. As Lord Coke put it, it means being brought in to answer "according to the 'old law of the land.'" Westervelt v. Gregg (1854) 12 NY 202, 212. The courts must furnish protection "against all mere acts of power, whether flowing from the legislative or executive branches of the government," Westervelt v. Gregg, *supra,* at p. 212, by offering the citizen a "forensic" judgment on his complaint, not "mere legislation." Taylor v. Porter (1843) 4 Hill 140, 146, 147.

By affirming the orders below in the present suit, we are holding that our customary certiorari proceedings under Art. 78 of the Civil Practice Act, somehow fail to meet the tests outlined above. Wherein are they deficient? The ultimate determination of the validity of Commission-established utility rates is now, as it always has been, in the courts. In this state certiorari as a traditional and accepted method of reviewing the action of inferior bodies or officers is older than the Fourteenth Amendment, and older than the state itself. People ex rel. Republican & Journal Co. v. Lazansky (1913) 208 NY 435, 441, 102 NE 556. In our state the whole judicial power is not committed to the courts in the first instance. People ex rel. Steward v. Railroad Comrs. (1899) 160 NY 202, 207, 54 NE 697, but the courts have always been empowered to re-examine the judicial or quasi-judicial action of other bodies by way of certiorari. Mooers v. Smedley (1822) 6 Johns. Ch. 28; People ex rel. Hanford v. Thayer (1895) 88 Hun 136; Hyatt v. Bates (1869) 40 NY 164, 166. For over a century the New York courts have found it sufficient to review such actions as to their legality, including a search of the record in each case to see if there be any evidence supporting the determination below, but without a retrial of fairly disputed questions of fact. People ex rel. Bodine v. Goodwin (1851) 5 NY 568; People ex rel. Cook v. Board of Police (1868) 39 NY 506; People ex rel. Burby v. Common Council of Auburn (1895) 85 Hun 601; People ex rel. Haines v. Smith (1871) 45 NY 772, and see § 2140 of the old Code of Civil Procedure, enacted in 1880, and former § 1304 of the Civil Practice Act, the latter now superseded by present § 1296 of the Civil Practice Act. As Judge Cudde-

back pointed out in People ex rel. New York & Q. Gas Co. v. McCall, *supra,* that limited judicial review avoids substituting the judgment of judges for that of other officers in matters of fact, but does include an inquiry into questions of jurisdiction, authority and similar questions of law. In other words, the courts do not interfere with the Commission's business any further than is necessary to keep the Commission within the law and protect the property rights of the utility corporations. This court's opinion in the New York & Queens Case, *supra,* points out (219 NY at pp. 88, 90, PUR1917A at pp. 555, 556) that our certiorari method of scrutinizing Commission-made rates is in seeming accord with Interstate Commerce Commission v. Illinois C. R. Co. (1910) 215 US 452, 54 L ed 280, 30 S Ct 155, and State v. Great Northern R. Co. 130 Minn 57, PUR1915D 467, 153 NW 247, Ann Cas 1917B 1201. In the Great Northern Case, the Minnesota court remarked that any general de novo trial by a court of a rate question would amount to an unconstitutional assumption by that court of an essentially legislative function.

To bring our list of New York decisions down to date, we point to Re Rumsey Mfg. Co. (1947) 296 NY 113, decided in January of this year. The Rumsey Corporation was ordered by the State Labor Department authorities to pay penalties totaling $1,000 for delays in filing its payroll statements. The corporation insisted that all the evidence taken at the departmental hearings proved that it had been absolutely impossible to get the reports in on time. Section 623 of the State Labor Law provides that "a decision of the appeal board shall be final on all questions of fact . . . ." It was argued to us that the statute, in so far as it forbade the courts to weigh the fact issues as to confiscation of property by means of an unwarranted fine, was unconstitutional (see Point III, respondent's brief in this court, in the Rumsey Case). We found "no substance" in that contention (296 NY at p. 118).

In Coler v. Corn Exchange Bank (1928) 250 NY 136, 164 NE 882, Chief Justice Cardozo, stating this court's approval on a long-established method of seizing property, wrote: "Not lightly vacated is the verdict of quiescent years" (250 NY at p. 141). He there cited Ownbey v. Morgan (1921) 256 US 94, 108, 111, 65 L ed 837, 41 S Ct 433, which tells us that one good way of testing court procedures for due process is to see whether they are familiar and time-honored. The Fourteenth Amendment itself expresses an insistence that the states perpetuate old and settled ideas of justice. In the Coler Case, Chief Judge Cardozo quoted also from Jackman v. Rosenbaum Co. (1922) 260 US 22, 31, 67 L ed 107, 43 S Ct 9:

"The Fourteenth Amendment, itself a historical product, did not destroy history for the states and substitute mechanical compartments of law, all exactly alike. If a thing has been practised for 200 years by common consent it will need a strong case for the Fourteenth Amendment to affect it. . . ."

The practice in this state for well over a hundred years has been for the courts to perform their proper judicial functions in relation to quasi judicial bodies by testing the actions of those

bodies for reasonableness and legality, without ousting them from their own special fields of investigation. Due process demands no more.

As we understand the majority's position, it is that due process requires a plenary equity suit to try plaintiff's allegation of confiscation, but that no new testimony need be taken, and that the equity court may try the issue on the proof already taken by the Commission. It must be clear: first, that plaintiff seeks no such proceeding and does not want new findings on the evidence already heard but demands a real de novo trial; and, second, that, while a new determination on the Commission record may satisfy concepts of due process, it finds no authorization or precedent in any procedural statute, rule or decision in this state. After this plenary equity suit has gone to trial and special term has weighed for itself the Commission testimony, the party aggrieved by the special term decision will, we assume, have a right of appeal to the appellate division. On such an appeal the weight of the evidence will again be open. That will make three separate, independent weighings, by one Commission and two courts, of the identical testimony, each tribunal having exactly the same function and power, but each over-ruling the one ahead of it. And, if the appellate division makes new findings, this court will for a fourth time pass on the weight of evidence. All this is in supposed obedience to instructions from the Supreme Court, which court not only has indicated in at least three recent decisions that no such new trials are necessary but has said in the Schechter Case (1935) 295 US 495, 530, 79 L ed 1570, 55 S Ct 837, 97 ALR 947, and elsewhere, that nothing in the United States Constitution prevents Congress from delegating the determination of fact questions to any tribunals it sets up.

The Public Service Commission was set up in this state forty years ago. The Commission has been investigating and fixing utility rates ever since. The scope of its work and the number and kind of services regulated by it have been gradually increased by the legislature. The Commission now has several hundred officers and employees and an annual budget of about $2,000,000. It regulates about 3,500 separate corporations and has conducted thousands of investigations and hearings, a large percentage of them having a direct or indirect effect on rates. Rate reductions running into vast sums have been ordered and put into effect. Now a way has been found to take away pretty much all finality from the Commission's rate-making function. We make no prediction as to the size and force of the impact of this present decision on the whole carefully built and strengthened system of protecting the interests of the people of this state. The decision, it cannot be denied, upsets a workable and working system. It authorizes an additional cumbersome and elaborrate method of court review when there is neither practical nor theoretical need therefor. And, based as it is on a construction of the Federal Constitution, our ruling will be beyond the power of the state legislature to correct.

In "Administrative Justice and the Supremacy of Law" by Dickenson, published in 1927, this was said as to authorizing the courts to make new

findings in these cases: "It is like permitting the court to substitute its conclusion in place of the jury's as to whether the plaintiff in a negligence action did or did not see an approaching vehicle. If the court's 'independent' judgment on such a point is to prevail, there would be little use in having a jury. The argument applies with greater force to the finding of a Commission, reached in a separate proceeding at much trouble and expense to both the public and the parties. The double process only reduplicates the uncertainty of any particular case and brings it out at the end of the administrative stage of the proceedings with nothing settled which is not liable to be overruled. After the administrative tribunal has spoken, the whole case would still be as open, and the nature of the ultimate decision as uncertain, as if no proceedings had yet been had. Such a hazard is not one which either the community or the utility companies ought fairly to be called upon to bear."

The order appealed from should be reversed and the complaint dismissed, with costs in all courts. Both certified questions should be answered in the negative.

Lewis, Conway and Dye, JJ., concur with Thatcher, J.; Desmond, J., dissents in opinion in which Loughran, Ch. J., and Fuld, J., concur.

Order affirmed, etc.

WISCONSIN PUBLIC SERVICE COMMISSION

Re City of Menasha

CA-2464
April 17, 1947

APPLICATION *of municipal plant for authority to install steam turbine generating plant; granted.*

Municipal plants, § 9 — Jurisdiction of Commission — Managerial matters — Plant construction.

It is not the function of the Commission to provide management or impose managerial restrictions upon a municipality as an electric utility, and it is within the managerial province of the utility to determine whether it will purchase or generate its requirements of energy.

By the COMMISSION: On January 29, 1947, this Commission received an application from the city of Menasha as an electric public utility for authority to construct a steam electric generating plant at an estimated cost of $1,500,000.

Notice of investigation and hearing and assessment of costs setting the hearing on February 19, 1947, was issued February 6, 1947.

At the request of the applicant, the hearing date was changed by letter on February 13, 1947.

APPEARANCES: R. T. Friedera, President, Water & Light Commission; P. J. Borenz, Secretary, Water & Light Commission; John Jedwabny, Assistant Secretary, Water & Light Commission; A. F. Wickeham, O. J. Sullivan, and R. J. Suess, Commissioners; John R. Scanlon, Mayor; V. R. Franz, R. B. Romnek, William Zeininger, Carl B. Rieschl, and J. C. Hyland, Aldermen; S. L. Spengler, City Attorney; P. E. Widsteen, Superintendent; H. O. Haugh, Building Inspector; W. J. Dougherty, City Clerk; A. L. Baenke, Armin Weber, and M. F. Crowley, Attorney, Water & Light Commission, for the city of Menasha; W. E. Strang, Employees' Service Manager, Marathon Corporation; H. K. Harley, for Harley Haydon Company, Madison; Willard Daggett, for Stifel Nicolaus Company, Chicago; F. E. Laramore, for Laramore & Douglas Company, consulting engineers, Chicago. In Opposition (withdrawn on condition): Shaw, Muskat & Paulsen, for Wisconsin Michigan Power Company.

For the past several years, the city of Menasha, as an electric public utility, has generated a portion of the electrical energy requirements of its customers with a Diesel electric generating plant having a capacity of 2,400 horsepower and has purchased the remainder from Wisconsin-Michigan Power Company. The contract with Wisconsin-Michigan Power Company not only specifies the rate at which energy is to be purchased and the conditions of delivery, but specifies the division of customers between the municipal utility and the Wisconsin-Michigan Power Company. The present proposed steam plant would, if constructed, replace the purchased power source. The Wisconsin-Michigan Power Company appeared in opposition to the proposed steam plant, but withdrew objections when the applicant stated that the present agreement governing the division of customers will not be disturbed. This matter is covered in § 3 of Art IV of the contract dated February 1, 1938, on file with this Commission, which reads as follows: "During such period the power company will not solicit or seek to serve any residential or commercial users within the city of Menasha and the customer will not solicit or seek to serve any industrial or other large users (not presently served by the customer) whose initial demand is in excess of 50 kilowatts."

In considering this application, the Commission is assuming that, should the plant be constructed, necessary documents will be executed which will continue the present division of customers.

The applicant's plan as disclosed by the testimony and exhibits is to install a steam electric generating plant consisting of two steam generators, each of which is to have a capacity of 60,000 pounds of steam per hour to operate at 600 pounds pressure and two steam turbine electric generators of 4,000 kilowatts capacity each. The new units are to be housed in a new building on a new site which is not near the existing Diesel electric generating plan. The existing Diesel electric plant, which has a capacity of 1,670 kilowatts, will be retained for standby purposes. The capacity of the steam and Diesel plants with one of the steam

units out of service will be 5,670 kilowatts.

The applicant's estimate of the future kilowatt-hour requirements of its customers appears to be reasonable in the light of past use, and the estimated demands also appear reasonable. The predicted demands indicate that a firm capacity of 5,670 kilowatts will take care of the city's requirements until about 1955. It is possible that the loads can be handled by the proposed plant for a period beyond 1955 if the peak demand does not recur frequently during the year. Sometime during the period 1955–1960, the applicant will have to consider adding capacity.

The evidence in this case includes estimates, furnished by the applicant, of the cost of energy if purchased under the existing contract with Wisconsin-Michigan Power Company and of what may be termed the bare production cost of the same energy if generated by means of the proposed steam electric units. A study of applicant's estimate of the cost of purchased power indicates that it may be low; but its estimate of cost of such production of energy, by means of the steam electric units, also appears low. Whether such estimates are or are not thus out of line, they indicate that the bare production cost of the utility's energy requirements for one year by means of the proposed steam electric units (such bare production cost being exclusive of all fixed charges) is about $70,000 less than the total cost of the same amount of energy if purchased under the existing contract.

This difference of $70,000 will be sufficient, in all probability, to meet the interest and amortization requirements of the investment necessary for the proposed addition of facilities; but it will, in all probability, not be sufficient to do much more than this or to afford to the utility any profit comparable to what might be considered a fair return on the investment in such facilities. In other words, it appears from the evidence before us that if the proposed facilities are authorized and constructed the utility will not stand to lose anything; but the saving which will result from the generation as against the purchase of power will not be sufficient to pay to the utility a profit equal to a fair return upon its investment in the additional facilities and at the same time enable the utility to retire the debt or investment required to be incurred or made by reason of the construction of such facilities.

It is not the function of this Commission to provide management or impose managerial restrictions upon the city of Menasha as an electric public utility of this state. It is within the managerial province of the utility to determine, under existing circumstances, whether it will purchase or generate its requirements of energy. The city has determined upon a program of generation in place of purchase. Such being the case, it is clear that the construction of the proposed plant is required by public convenience and necessity in accordance with the provisions of the Commission's general order in docket 2–U–20, PUR 1932 A 411.

The Commission finds:

1. That the construction and installation by the city of Menasha, as an electric public utility, of a steam elec-

tric generating plant, as specified in the evidence herein and described above, is required by public convenience and necessity.

2. That the proposed construction, installation, and operation of such steam electric generating plant meets the requirements of § 196.49, Statutes, and the application herein meets the requirements of the Commission's general order in docket 2-U-20.

The Commission therefore certifies:

That the city of Menasha, as a public electric utility, is hereby authorized to purchase and install the equipment necessary to construct the 8,000-kilowatt steam electric generating plant described in the foregoing findings at an estimated cost of $1,500,000 upon the following conditions:

1. That this Commission be notified of any major changes in design, location, size, or cost of the proposed addition.

2. That in the future fixation of rates for the city of Menasha, as an electric utility, the cost of energy available through purchase will be considered in arriving at the reasonable operating costs of the Menasha utility.

3. That construction be started within one year of the date hereof.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Arena & Ridgeway Telephone Company

2-U-2302
April 23, 1947

APPLICATION *for authority to increase telephone rates; new rates prescribed.*

Payment, § 59 — Deposit rule.

A telephone company should file a deposit rule to prevent losses from subscribers whose credit is not established.

Service, § 190 — Telephone extensions — Deposit rule.

Deposit rule relating to telephone extensions as used by Wisconsin telephone companies, p. 148.

By the COMMISSION: The Arena and Ridgeway Telephone Company, operating in the northeastern part of Iowa county, filed an application with the Commission on December 31, 1946, for authority to increase its rates approximately $1 per quarter, as more particularly set forth in the application. Proof was also filed of the service of a notice of the application

upon the Federal Office of Price Administration and of consent to the timely intervention of such agency in this proceeding. A notice of investigation and hearing was issued on January 7th.

APPEARANCES: Robert McCutchin, President, and Thomas McCutchin, Secretary, both of Arena, and Norman Duesler, Director, Barneveld, for the Arena and Ridgeway Telephone Company; O. P. Deuel, rates and research department, of the Commission Staff.

The applicant has two telephone exchanges, one at Arena and the other in the unincorporated community of Hyde, Iowa county. There are 92 stations connected to the Area Switchboard, 81 to the Hyde central office, and 13 stations on a line connected to both switchboards, for a total of 186 stations served by the company. The switchboard at Arena is a 27-line board with 15 lines in service, and the central office at Hyde is equipped with a 50-line-capacity switchboard to which 24 lines are connected. Urban circuits are grounded, and all but 3 rural circuits are metallic. The applicant plans to metallicize all lines as soon as possible.

On December 31, 1946, there were 112 miles of pole line and 247 miles of wire in service. Subscribers receive unlimited interexchange service between the applicant's two exchanges and from either of these exchanges to Ridgeway and Barneveld, exchanges of neighboring telephone companies.

The present and proposed rates are:

	Present Rates Per Quarter		Proposed Rates Per Quarter	
	Gross	Net	Gross	Net
Urban Rural Service				
One party	$5.00	$4.75	$6.50	$5.75
Multiparty	5.00	4.25	6.00	5.25
Extension telephone service	...	...	2.25	1.50
Installation charge		2.00*		5.00*
Reconnection charge		1.00		2.00

* To be refunded after two years of continuous service.

From the record it is evident that the cost of rendering service has increased in recent years because of a change from grounded to metallic-line service to most subscribers, increased wages paid to switchboard operators, increases totalling over 100 per cent in wages paid to linemen and general officers, and the rise in prices paid for material and supplies.

It is estimated that an annual profit of $610 would be available at proposed rates. Such a profit is reasonable when related to the investment required to render telephone service to the public in and around the communities of Arena and Hyde. The rates applied for are reasonable with the exceptions discussed below.

The applicant requests authority to apply a service connection charge of $5 refundable after two years of service at one location. A somewhat lower service-connection charge should be established, and the charge should not be refundable. The nature of the service-connection charge is such that it should be a sufficient amount to cover

the cost of disconnection when service is discontinued, and the retention of service for a period of two years has no relationship to such charge.

It it also true that much of the expense associated with the extension of telephone service is charged to capital accounts. The applicant should file a deposit rule to prevent losses from subscribers whose credit is not established. A sample of such rule as used by other telephone companies is:

Deposits

Applicants or customers whose credit rating is or may become unsatisfactory will be required to make a deposit of not more than the rate for exchange service for one billing period (except when a minimum contract period of more than one month is required in which case the deposit shall be equal to one-half of the rate for exchange service for the entire initial contract period) plus the estimated toll bill for two billing periods to be applied at any time, at the option of the telephone company, in payment of any subsequent unpaid charges for service rendered to the customer.

Any balance of the amount deposited is returned to the customer at termination of service, at the termination of a minimum contract period, or at any time previous thereto when a satisfactory credit rating has been established.

Simple interest at the rate of 5 per cent will be paid on all sums retained on deposit by the company for thirty days or longer. No interest credit will be made on a deposit or any portion of a deposit after the date on which a notice of refund is deposited in the U. S. Mail addressed to the last-known address of the customer.

The fact that a deposit has been made does not relieve the customer from complying with the company's regulations as to advance payment and prompt payment of bills on presentation.

The reconnection charge of $1 on file is adequate. Therefore, the request for a higher reconnection charge will be denied. Filing of a deposit rule will make it possible for the company to minimize delinquent accounts and reduce the number of applications of a reconnection charge.

The Commission finds:

1. That present rates of the Arena and Ridgeway Telephone Company to the extent herein modified are unreasonable.

2. That the rates hereinafter ordered are reasonable.

MISSOURI PUBLIC SERVICE COMMISSION

Nixa Telephone Company

v.

Ozark Cooperative Telephone Company

Case No. 10,844
April 25, 1947

PROCEEDINGS *by telephone company to require coöperative to permit interstate company to establish a direct circuit for long-distance service to its lines; construction of direct service line approved.*

Service, § 468 — Telephones — Toll service — Direct connection with interstate system.

1. A community which is being provided with seriously inadequate toll service under an arrangement whereby its local exchange sends toll calls through another local company and then to an interstate system should be provided with direct toll service from its local exchange to the interstate system, p. 151.

Service, § 110 — Commission functions — Telephones — Inadequate toll service.

2. It is a matter for the Commission to determine what should be done to improve telephone service in a community served by two exchanges when neither of these exchanges offers any constructive solution to inadequate toll service being rendered and where the interstate company, with which these exchanges connect, is willing to aid in any way to remedy the situation, p. 151.

Service, § 47 — Commission authority — Competition — Service improvement.

3. The Commission is reluctant to interfere with the operations of utilities who profess to serve the public and assume the obligation of furnishing adequate service in a defined area, but where the serving utilities do not protest a new competitor's entering the field or other service revisions, the Commission is free to determine what is required so that the area will be adequately served, p. 151.

Monopoly and competition, § 41 — Inadequate service — Effect on utility's right to monopoly.

4. A utility which fails in its obligation to serve the public adequately either forfeits the right to serve the community as a monopoly or becomes subject to Commission investigation and penalty as provided by law, p. 151.

By the COMMISSION: This case is before the Commission upon the complaint of the Nixa Telephone Company asking that this Commission require the defendant to release the Southwestern Bell Telephone Company from a traffic agreement pertaining to long-distance telephone calls

originating from customers of the complainant and carried from the exchange of the complainant over circuits of the defendant to the system of the Southwestern Bell, located at Springfield, Missouri, to Springfield and points beyond Springfield, and authorize the Southwestern Bell Telephone Company to construct a circuit or circuits from its system at Springfield direct to the Nixa exchange, thereby enabling the complainant to make toll connections directly from its exchange to the Springfield exchange of the Southwestern Bell, which in turn would relieve it of the necessity of placing toll calls through the exchange of the defendant located in the city of Ozark, Missouri.

After due notice had been given to all parties concerned, the case was heard before the Commission at its office in Jefferson City, Missouri, and submitted upon the record then made.

The evidence shows the complainant is a mutually organized, owned, and operated telephone exchange, operating under the assumed name of the Nixa Telephone Company. It is engaged as a mutually owned or self-serving association in the operation of the exchange at that town, furnishing telephone communication to residents of the town and rural territory adjacent thereto. Nixa is located on State Highway No. 125, approximately 12 miles south of the city of Springfield. The complainant has toll and telephone communication service between its exchange and two exchanges located in the city of Ozark, which is some 6 miles to the east of Nixa on U. S. Highway No. 63, and is likewise south of Springfield.

It so happens that in Ozark there are two telephone exchanges operating under competitive conditions. One of them, the Christian County Telephone Company, is a privately owned system operating as a public utility. It owns and operates a toll line between its exchange at Ozark and the exchange at Nixa. Over this line it provides service for the complainant to other towns around Ozark and to the exchange of the Southwestern Bell at Springfield. However, it is not a party to this proceeding. It appeared at the hearing by counsel and stated it was making no objections to the granting of the relief sought by the complainant.

The other exchange located at Ozark is a mutually owned and operated exchange, operating under the assumed name of the Ozark Cooperative Telephone Company. This association, the defendant, also owns and operates a toll circuit between its exchange at Ozark and the exchange at Nixa. It likewise has a connection with the exchange of the Southwestern Bell at Springfield, Missouri, and presumes to perform the duty of providing toll connections between the exchange of the complainant and the system of the Southwestern Bell. No one appeared at the hearing in the interest of this association so the information submitted at the hearing relative to its operations must necessarily be taken from witnesses who may not be fully familiar with the system of the defendant and its operation.

The Southwestern Bell Telephone Company appeared by counsel, who stated in substance that the Southwestern Bell had no evidence to offer. Counsel stated the Southwestern Bell recognizes as part of its obligation as

a statewide operator of telephone facilities to see that every community in the state is to be provided with the best telephone service possible. Furthermore, its policy is not to invade territory occupied by some other operating telephone organization without the consent of the owners of the system. The Southwestern Bell states it has notified the complainant that it is willing to install telephone circuits from Springfield to the Nixa exchange if agreeable to the owners of the two exchanges at Ozark, through which exchanges, as stated above, it affords toll and telephone communication between Nixa and the Springfield exchange. Counsel for the Southwestern Bell Company indicates that it is his understanding the owners of both the systems at Ozark have consented to the establishment of a direct circuit from Springfield to Nixa. Counsel states the Southwestern Company is willing to install such line when materials and labor can be secured for executing the work. His understanding is that the telephone circuits from Springfield to Ozark, over which the complainant secures the service, are now overloaded and that additional facilities for Ozark alone are needed in order that the public served by the Ozark exchanges may receive adequate toll service.

[1] The evidence clearly shows Nixa is now being provided with seriously inadequate toll service and there is no indication the owners of the circuits over which the service is now being rendered contemplate making any effort to relieve the situation. The town of Nixa seems to be a growing community, has a number of small industries located therein, including two relatively large milk processing plants. It is claimed by one of the witnesses that one of the processing plants is as large as any of the kind in the United States. The headquarters of two of the plants are in Illinois, so it is quite evident there is need for satisfactory toll service to points beyond the local community.

[2] With the two exchanges located in Ozark, through which toll service is furnished Nixa, not objecting to what solution may be made of the situation in which the community of Nixa finds itself, and without the owners of those two exchanges offering to aid in that solution, it becomes a matter for the Commission to determine what should be done. The Southwestern Bell offers its services to assist in any way the Commission may determine it should participate.

[3, 4] The Commission is reluctant to interfere with the operations of utilities who profess to serve the public and assume the obligation of furnishing adequate service in a defined area, but in this instance the serving utilities make no claims or offers relative to what injuries they may suffer or what revenues they may lose if the complainant is given the relief it now seeks. So, it appears that the Commission is free, without adhering strictly to the precedence it has always followed in not allowing one utility to invade the territory served by another, to determine what is required to serve adequately the community of Nixa. Proof is sufficient to show it is not now receiving adequate service, and the Southwestern Bell, being financially able, is willing to construct the facilities required to relieve the situation as soon as materials and la-

bor are available. It does not appear necessary to go into the issues or facts in great detail. The circuits over which the Nixa exchange is now receiving toll service are not adequate, and it appears that should the Southwestern Bell Company provide circuits direct to Nixa from Springfield, the circuits from Springfield to Ozark may not be more than adequate for the remaining service originating at Ozark without the Nixa traffic. Therefore, from the evidence that has been submitted, the Commission finds the public convenience and necessity at Nixa, Missouri, requires additional toll facilities in order that it may be properly served, and that the most economical and satisfactory method of providing the facilities is to request the Southwestern Bell to extend whatever facilities that are needed from its exchange at Springfield to the Nixa exchange. We note the complainant asks this Commission to relieve the Southwestern Bell of its traffic agreement relationship with the defendant company and the Christian County Telephone Company at Ozark, wherein the Southwestern Company is required to provide service to Nixa only through the two Ozark exchanges, but it does not appear to the Commission that it should presume to void those agreements, because if the two telephone exchanges at Ozark have failed to provide adequate facilities for the public at Nixa, they have not made it possible for the Southwestern Bell to fulfil its obligations to the public either in Ozark or in Nixa. Furthermore, it is the Commission's view that if a utility fails in its obligation to serve the public adequately, it either forfeits the right to serve the community as a monopoly, or becomes subject to an investigation and penalties as provided by the law for having failed. It appears in this instance it is preferable to look upon the territory of Nixa as being open to additional facilities, rather than to investigate and determine what should be done by the utilities operating in Ozark.

It is, therefore,

Ordered: 1. That the Southwestern Bell Telephone Company be and is hereby requested to extend the necessary toll circuits from its telephone system in Springfield, Missouri, to the exchange at Nixa, for providing adequate toll service to the telephone exchange operating in Nixa, Missouri.

Ordered: 2. That this report and order shall take effect ten days after this date, and that the secretary of the Commission shall forthwith serve copies of same on all interested parties herein, and that each of said parties shall notify the Commission before the effective date of this order in the manner prescribed by § 5601, Revised Statutes of Missouri, 1939, whether the terms of said report and order are accepted and will be obeyed.

MISSOURI PUBLIC SERVICE COMMISSION

Re LaBelle Telephone Company

Case No. 10,993
April 29, 1947

APPLICATION *by telephone company for authority to file a schedule of increased rates; denied.*

Return, § 112 — Telephones — Adequate depreciation and return.

1. A rate of 9.94 per cent for depreciation and return on a telephone plant was considered adequate, p. 154.

Rates, § — Telephones — Service inadequacy — Effect on increase.

2. A telephone system which is not in better than 50 per cent condition of what it should be when constructed will not be able to render adequate service and, therefore, should be denied a rate increase until reconstruction is completed, p. 154.

By the COMMISSION: This case is before the Commission upon the application of the LaBelle Telephone Company for authority to file a schedule of increased rates for telephone service to be furnished to subscribers in the city of LaBelle and rural territory adjacent thereto.

Upon receipt of the proposed rates the Commission required the applicant to publish in two issues of the local newspaper, the present rates and the rates proposed. Apparently upon notice to the public, protests were made to the Commission objecting to the authority requested. Upon receipt of such objections the Commission suspended the proposed rates for a period extending from December 31, 1946, to April 30, 1947. Then after due notice to all parties, the case was heard and submitted upon the record then made.

The evidence shows that the LaBelle Telephone Company is a company owned principally by Marie K. Benner. The property came to her from the estate of her father, Chas. H. Kendrick, recently deceased.

The present rates and those proposed are as follows:

Present Rates

City business, wall type telephones	$1.75
City resident, wall type telephones	1.25
Desk set telephones, additional	.25
Rural resident company-owned lines	.75
Rural resident company-owned lines and instrument	1.10
Rural resident, subscriber-owned lines	.50
Extension sets	.50
Call bells	.25
Installation of telephones	1.00
Installation of call bells	1.00
Installation of extension set	1.00

Rates Proposed

City business, wall type telephones, 1- or 2-party	2.75
City resident, wall type telephones, 1- or 2-party	1.65
Extension sets, wall type	.50
Gongs	.50
Call bells	.25
Desk set telephones, additional	.25
New type handsets, additional	.40
Rural subscribers:	
Company-owned lines	1.00
Subscriber-owned lines	.50
Company-owned lines and instrument	1.65

Rural subscribers to pay rent quarterly, semiannually, or annually in advance.

Telephone move or change charge when telephone is in house	1.00
Installation charge of telephone	1.50
Installation charge of extension	1.50
Installation charge of bells	1.00
Installation charge of gongs	1.50
Service connections or name change where telephone is in place	1.00
Restoration of service after suspension for which subscribers are responsible	1.00

LaBelle telephone subscribers to be entitled to one switch which includes Lewistown, Knox City, Newark, Williamstown, and Steffenville.

The protests received from some of the patrons of the applicant in this case indicate the service is not of the quality they desire and it appears that the property has been allowed to depreciate seriously to the extent that it is not possible to furnish first-class telephone service to the subscribers who are as interested in securing improved service as they are in the increased rates. The testimony of the owner's husband, E. Ray Benner, who assists her in managing the property shows that the plant is badly depreciated. He indicates that it will be necessary to replace 50 per cent of the plant in order to give first-class telephone service and he proposes to do that. In support of her contention that she should be allowed to charge the increased rates, the applicant claims that the value of the plant, on any basis of determining its value, such as reproduction or original cost basis, is $20,000. It is used to furnish service through 272 company-owned stations located in the city and rural territory and through 132 subscriber-owned stations, a total of 404 subscribers being served through this plant. The revenues received during the year 1946 amounted to $7,843.44. The expenses, including $450 for depreciation, amounted to $7,888.46, showing a deficit of $45.02.

[1] The applicant estimates the proposed rates will increase the annual revenues $2,390.40 which added to what was realized from operations during the year 1946 will produce for depreciation and return $2,795.38. That is an excessive amount for depreciation and return for a plant with a value of $20,000. On the other hand, the applicant states that it will be necessary to increase wages both to the outside men and to the operating staff $806 a year. With that increase the applicant will realize only $1,989.38 for depreciation and return. That amounts to 9.94 per cent for depreciation and return on the plant if its value is $20,000. That is an adequate amount for depreciation and return.

[2] Looking over the schedule and in view of the fact that the customers have objected to the proposed increase because of poor quality of service, the Commission is of the opinion that the applicant should not be allowed to put into effect the rates proposed until the telephone system has been completely rebuilt so that satisfactory service can be furnished to the public by the use of it. Any telephone system that is not in better than 50 per cent condition of what it should be when constructed new will not enable the management to render adequate and satisfactory service to the subscribers. So the Commission is of the opinion that the increase in rates should be denied until the plant is reconstructed. After the applicant has reconstructed the plant she will then be in position to come to the Commission and show what has been spent in reconstructing the property and the expenses that are

incurred in rendering service. Beyond a doubt it will be necessary for the applicant to provide additional funds for rebuilding the plant. The testimony indicates there has not been set aside funds to take care of the depreciation of the plant, and that being true, new money will have to be put into it for purchasing material and securing the labor that will be required for rebuilding the system.

It is, therefore,

Ordered: 1. That the LaBelle Telephone Company be and is hereby denied authority to file an increase in rates for telephone service furnished in LaBelle, Missouri, and territory adjacent thereto until the telephone system has been reconstructed and put in proper condition for rendering satisfactory and adequate service to the public.

Ordered: 2. That the LaBelle Telephone Company be and is hereby required to withdraw its proposed schedule of rates as filed herein with the Commission.

Ordered: 3. That this order shall take effect on the date hereof, and that the secretary of this Commission shall forthwith serve on all parties interested herein a certified copy of this report and order.

MISSOURI PUBLIC SERVICE COMMISSION

Re Gas Service Company

Case No. 11,060
May 2, 1947

APPLICATION *of a gas utility for authority to put into effect new regulations governing the curtailment of natural gas service; service curtailment rules authorized.*

Service, § 146 — Gas — Space heating — Curtailment during shortage.

A natural gas company was authorized to curtail service to new commercial space-heating customers during a critical shortage of natural gas when it was shown that curtailment was necessary in order to continue the supply to domestic customers.

By the COMMISSION: This case is before the Commission upon the application of The Gas Service Company for authority to file certain rules and regulations and statements of conditions applying to gas service furnished by it in a number of towns and cities in Missouri because of the existence of the shortage of gas supply to said applicant by gas transmission systems from which the gas is purchased.

Upon notice to the city of Kansas City, the largest city served by the applicant in this state, the city of Kansas City replied through its special

utilities and legislative counsel that the city was not at this time opposing the proposed filing of the restricted rules, but that the city desired to be heard relative to the matter. Accordingly, after due notice, a hearing was held on the 18th day of April, 1947, before the Commission at Jefferson City and submitted upon the record then made.

The president of the applicant company in his testimony claims that testimony introduced before the Federal Power Commission by the Cities Service Gas Company in the hearings held at Kansas City between November 25, 1946, and April 2, 1947, showed the total available supply for customers served by the Cities Service Gas Company (the gas transmission system from which the applicant purchases its gas supply will be 601,004,000 cubic feet on a peak day of twenty-four hours at a minus 4 degrees mean temperature in the winter of 1947–48). The total demand requirements of the system on that day, as shown, will be 1,015,019,000 cubic feet, which means that there will be a shortage in the ability to supply the total demand, of 414,015,000 cubic feet. The president stated that by interrupting the entire readily curtailable industrial load amounting to 369,275,000 cubic feet, there will still be a shortage of 44,740,000 cubic feet, which must be taken care of by interrupting the not-readily curtailable load. This witness further states that when the not-readily curtailable customers are shut down it means they must close their plants and send their employees home. His judgment is that it is better to supply the not-readily curtailable customers than to furnish gas for space-heating purposes to the type of commercial customers described in the rules proposed by the applicant.

Testimony was also given by the president of the applicant company purporting to show the evidence before the Federal Power Commission revealed there would be a continuing shortage of gas in the next two or three years, until additional capacity can be constructed in the transmission systems serving Kansas City and other towns in Missouri, providing for greater transmission of gas from the gas fields to the city gates.

The record shows in more detail the fact there is a serious shortage of gas existing in the system of the supplying company and that it is necessary for the applicant to put into effect certain restrictive regulations whereby domestic customers and others entitled to prior service may receive a continuous gas supply in order to protect the health and safety of the public.

The rules the applicant proposes to put into effect are as follows:

"During such time as the emergency above recited continues and thereafter as its contract with its supplying pipe line requires the company may refuse service for heating purposes where gas heating equipment is used for commercial heating, including store buildings, manufacturing plants, garages, service stations, warehouses, offices, hotels, hospitals, schools, churches, and like establishments not presently receiving service for such purpose.

"If any customer shall connect or use any equipment or facilities above restricted, or shall connect any such equipment, the company may discontinue the supply of gas to such cus-

tomer for all purposes and withhold such supply until such customer disconnects such equipment and agrees to make no further unauthorized use thereof."

In view of the evidence submitted and from the facts that have been brought before the Commission, the Commission finds that the curtailment rules proposed should be authorized to become effective.

It is, therefore,

Ordered: 1. That The Gas Service Company be and is hereby authorized to file and put into effect the rules and regulations herein set forth.

Ordered: 2. That this order shall take effect ten days after the date hereof, and that the secretary of the Commission shall forthwith serve on all parties interested herein a certified copy of this report and order, and that the applicant and all other interested parties shall notify the Commission in the manner prescribed by § 5601, Revised Statutes of Missouri for 1939, whether the terms of this order are accepted and will be obeyed.

SECURITIES AND EXCHANGE COMMISSION

Re New England Gas & Electric Association et al.

File Nos. 54-120, 59-34, Release No. 7277
March 11, 1947

APPLICATION *for exemption from competitive bidding requirements of Rule U-50 of Securities and Exchange Commission with respect to the sale of preferred and common shares of stock; exemption granted.*

Security issues, § 112 — Exemption from competitive bidding.

Exemption from the competitive bidding requirements of Rule U-50 of the Securities and Exchange Commission was granted with respect to new preferred shares and unsubscribed for common shares, to be sold pursuant to the terms of a simplification plan under § 11(e) of the Holding Company Act, 15 USCA § 79k(e), in view of imminent maturities of outstanding debentures and the consequent necessity for prompt consummation of the recapitalization, the status of the issuer as a voluntary association, the securities involved, and the history of the reorganization.

By the COMMISSION: The Commission, by order dated February 11, 1947, 67 PUR(NS) 387, approved the Alternate Plan for recapitalization of New England Gas and Electric Association ("New England") under

§ 11(e) of the Public Utility Holding Company Act of 1935, 15 USCA § 79 k(e), and other applicable provisions thereof. Pursuant to the terms of its Alternate Plan which provides, among other things, for the retirement of New England's outstanding debentures in the principal amount of $34,998,500, New England will issue and sell $22,-425,000 principal amount of collateral trust bonds and 77,625 cumulative convertible preferred shares having a dividend rate not in excess of 5 per cent. Under the terms of the Alternate Plan, 766,776 shares of new common will be allocated for distribution to holders of the outstanding $5.50 preferred shares at the rate of 8 new common shares for each share of preferred held. In order to provide New England with $4,312,500 of cash, needed by it (in addition to the proceeds from the sale of the new bonds and preferred shares) to carry out the terms of the plan, the holders of the outstanding $5.50 preferred shares will receive transferable rights to subscribe for 5 additional shares of new common (or a total of 479,235 shares) at $9 per share. Each holder of $5.50 preferred will also receive nontransferable rights to subscribe pro rata to not more than 20 additional common shares to the extent that the transferable rights are not exercised. The latter provision is designed to provide an additional means of raising the said $4,312,500 of cash in the event that the transferable rights are not fully subscribed. However, New England states that in order to provide complete assurance that the necessary cash will be obtained it is essential that a standby agreement be entered into for the purchase of the shares of common not subscribed for pursuant to the rights offering.

Under the terms of the Alternate Plan, the bonds will be sold at competitive bidding. Since the Alternate Plan is silent as to whether the new preferred shares will be sold at competitive bidding or by a negotiated sale the Commission, in approving the plan, reserved jurisdiction, among other things, to pass upon such matters. New England has now filed an amendment to its application under § 11(e) requesting an exemption from the competitive bidding requirements of Rule U–50 with respect to the new preferred and unsubscribed for common shares.

New England in its amendment states that successful consummation of the Alternate Plan can be assured only by the granting to it of an exemption from Rule U–50 in the disposition of the preferred and common shares. The reasons, among others, for such exemption as set forth by New England may be summarized as follows:

1. New England has a debenture maturity in the principal amount of $13,206,000 on September 1, 1947, which if not provided for will accelerate its other debenture maturities of 1948, 1950, 1962, and 2031 in the additional aggregate principal amounts of $21,792,500;

2. New England is a Massachusetts voluntary association. Thus, as an unincorporated issuer, some questions arise as to the marketability of its securities as a result of blue sky, insurance, etc., qualifications in certain jurisdictions making necessary more extensive preparation by the underwriter in seeking out the available

markets than would otherwise be necessary;

3. Pursuant to the terms of its Amended Plan approved by the Commission on June 24, 1946, New England invited bids on collateral trust bonds and common shares in August 1946 and on learning that in the then condition of the market no bids were to be received withdrew the invitation. In its peculiar situation and considering its imminent maturities, New England states that it must adopt that procedure most likely to assure consummation of its recapitalization and that repetition of the experience of last summer might be disastrous since it might preclude the possibility of subsequent successful sale of its securities by negotiation.

In the particular circumstances of this case, including the imminent maturities of New England's outstanding debentures and the consequent necessity for prompt consummation of the recapitalization of New England, and taking into account the nature of the issuer and the securities involved as well as the history of this reorganization, we conclude that it is appropriate in the public interest and in the interest of investors and consumers to grant New England's request for an exemption from the competitive bidding requirements of Rule U–50 with respect to the new preferred and common shares.

It is therefore *ordered,* pursuant to the applicable provisions of the act, that the application for exemption from the competitive bidding requirements of Rule U–50 with respect to the proposed cumulative convertible preferred shares and common shares to be sold pursuant to the terms of the Alternate Plan, be, and hereby is, granted forthwith, subject to the terms and conditions and reservations of jurisdiction prescribed in the said order of February 11, 1947, *supra,* approving the Alternate Plan, including the reservation of jurisdiction over the reasonableness of the price to be paid for the securities; the terms of the offering thereof; the underwriter's spread and the fees and expenses in connection therewith.

MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Re Webster-Dudley Transit Company, Incorporated

D. P. U. 5955-HG
May 9, 1947

PETITION *for license to engage in business of rendering special or charter service by motor vehicle; dismissed.*

Certificates of convenience and necessity, § 74 — Grounds for denial — Corporation not organized.

A petition in the name of a nonexistent corporation for operating authority should be dismissed although it is the intention of persons filing the petition to form a corporation if and when their application is granted.

By the DEPARTMENT: A public hearing was held regarding the above-entitled matter on May 5, 1947.

This is a petition filed in the name of the Webster-Dudley Transit Company, Inc., by Francis S. Kubicki, James T. McGeary, and Leon S. Sielawa.

It appears from the testimony in this case that said Webster-Dudley Transit Company, Inc., is nonexistent, and that it is the intention of the three persons above-named to form a corporation if and when their application is granted.

In view of the foregoing, we are of the opinion that this petition is not properly before the Department.

Therefore, after notice, public hearing and consideration, it is

Ordered, that the petition of Webster-Dudley Transit Company, Inc., (D.P.U. 5955-HG) be and hereby is dismissed.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

Toledo Edison Co. Plans $29,000,000 Expansion

A TWENTY-NINE million dollar expansion program has been announced by Toledo Edison Company.

The program, which is to extend through 1949, is designed to meeting the constantly increasing demands for electricity on the part of industrial, residential, and commercial consumers in the area.

The largest single item in the expansion is to be a 90,000 kilowatt generator for the Acme plant in East Toledo. Cost of this unit, and of the supplementary equipment, is estimated at $9,500,000.

Other construction expenditures are to go for new sub-stations, transmission lines, and for additions and improvements to the transmission grid which serves eight northwestern Ohio counties.

Public Service Co. of Colorado Wins Valor Award

"FOR extraordinary courage and devotion to duty," twelve employees of the Public Service Company of Colorado were honored by the electric industry of the nation with the Claude L. Matthews Valor Award. Presentation of the award occurred during the recent annual convention of the Edison Electric Institute, in Atlantic City, New Jersey.

The men so honored comprised an electric transmission line crew who prevented destruction of a section of one of the company's major power circuits during a 13-day blizzard on Hagerman Pass, near Leadville, in January, 1946. Those who participated in the rescue of the storm battered line were E. V. Stuart, line superintendent, Denver; Eldin C. Larsen, assistant superintendent, Denver; Glen C. Farnsworth, transmission engineer, Denver; Sam C. Phillips, lineman, Reudi, Colo.; A. J. Lumsden, Bigelow, Colo.; Ernie Richey, E. L. Noland, G. E. Atkinson, T. G. Johnson, S. M. Stroebeck, Harry O. McIntosh, and E. D. O'Connor, linemen, all of Denver.

The achievement for which the men were honored was the conquering of twelve miles of perilous patrol trails in ascending the snow-banked slopes of 12,200-foot Hagerman Pass to remove the threat of damage to the line. Mr. Stuart and his men were stationed atop the pass in the company's emergency cabins for eight days of sub-zero weather, high winds, and sleet storms. During this time they made repairs to three storm-buckled steel towers, which carry the transmission line over the lofty pass.

Home Economists Discuss Ways To Serve Appliance Field

HOW home economists can serve the appliance industry, public utilities, and the retail field more effectively through theirs and management's "mutual understanding of aims" was one of the main themes of the 1947 convention of the American Home Economics Association held recently in St. Louis.

A special two-day program was devoted to "Home Economics in Business," a department of the national association, at which Essie L. Elliot of Los Angeles, chairman of the business group, presided.

Thousands of home economics teachers, demonstrators, and home economists for industry, utilities, retail stores, and institutions attended the conclave, which was highlighted by exhibits of furnishings and appliances for the "home of today and tomorrow" and new trends in clothing and foods for the family of 1947.

Among those dramatizing good living were five home economists from the Hotpoint Institute, appliance testing and use-training laboratory for the company, who showed how closely housekeeping is approaching the "touch a button" age with an all-electric kitchen.

Sewer and Pipe Line Cleaner Described

A NEW, four-page two-color circular describing the "Flexi-Cleaner," an electric motor-powered sewer and pipe line cleaning machine, is now being distributed by the manufacturers, Flexible Sewer-Rod Equipment Company, 9050 Venice boulevard, Los Angeles 34, California.

Copies of the circular may be obtained from the manufacturer.

EEI Offers Training Program For Agricultural Workers

A TRAINING program in farm electrification, especially prepared to give agricultural extension agents, agricultural teachers, and rural electric service organization personnel, practical information about profitable uses of electric service on the farm, has been released by the Edison Electric Institute, according to a recent announcement.

"As we near the completion of the big job of building rural electric lines, more and more farmers are raising questions as to how electricity can best be employed in their farm operations," the announcement stated. "This

course is designed to supply the leaders with practical data on farm electrification needed to answer the farmers' specific questions."

The Institute's training program, as presented in a comprehensive manual, consists of two days of instruction. A complete schedule, with a detailed outline of the subjects recommended, and ample reference material for the guidance of those preparing the course, is included in the manual. Local conditions may, in some cases, warrant a more extended course, and the EEI program is adapted for ready expansion to a greater length, if desired.

Among the subjects included in the Institute's program are: The present status of farm electrification; basic fundamentals of electricity; wiring and re-wiring for the farm; lighting; water systems; home appliances; electric rates; freezing equipment; electrical equipment for poultry and egg production, dairying and feed and crop processing; electric motors. The manual presents detailed information on many of these subjects, and a list of additional pertinent references is provided to aid those teaching the course.

Copies of the in-service training manual are being sent to state directors of extension activities, power companies, and others concerned with agriculture, by the Institute. Additional copies will be made available, at $1.50 per copy.

Hartford Elec. Lt. to Spend $12,000,000 on Expansion

HARTFORD ELECTRIC LIGHT COMPANY plans a three-year construction program calling for expenditure of approximately $12,000,000.

The principal part of the program calls for expansion of the company's generating facilities by addition of a 45,000 kilowatt unit, to be completed late in 1949. The generating station expansion will give the company an approximate 25 per cent increase in capacity by 1950.

Austen D. Barney, president, said that demand for the company's power reached new peaks throughout the war. Since then, demand by industrial, commercial, and domestic customers has continued at such high levels that further expansion is required.

Construction Loans Announced

CONSTRUCTION loans—chiefly for distribution lines, system improvements or new or additional generating capacity—recently were made to the following enterprises by the Rural Electrification Administration:

Northeast Louisiana Power Coöperative, Winnsboro, La., $208,000.

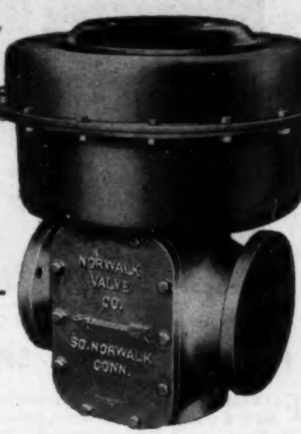
Vigilante Electric Coöperative, Dillon, Mont., $405,000.

Greenbelt Electric Coöperative, Wellington, Tex., $209,000.

Public Utility District No. 1 of Klickitat County, White Salmon, Wash., $775,000.

Quinault Light Company, Quinault, Wash., $43,000.

Brown County Rural Electrical Association, Sleepy Eye, Minn., $480,000.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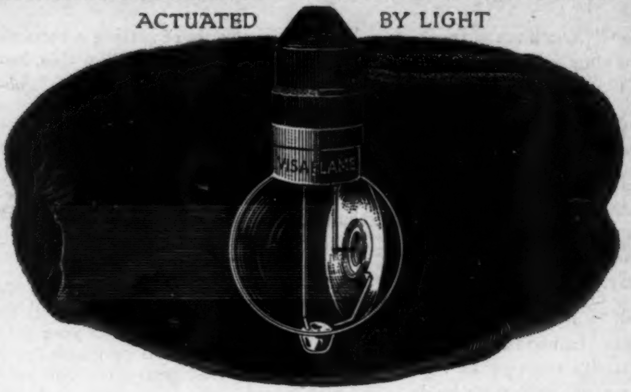

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• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design, and construction. » » »

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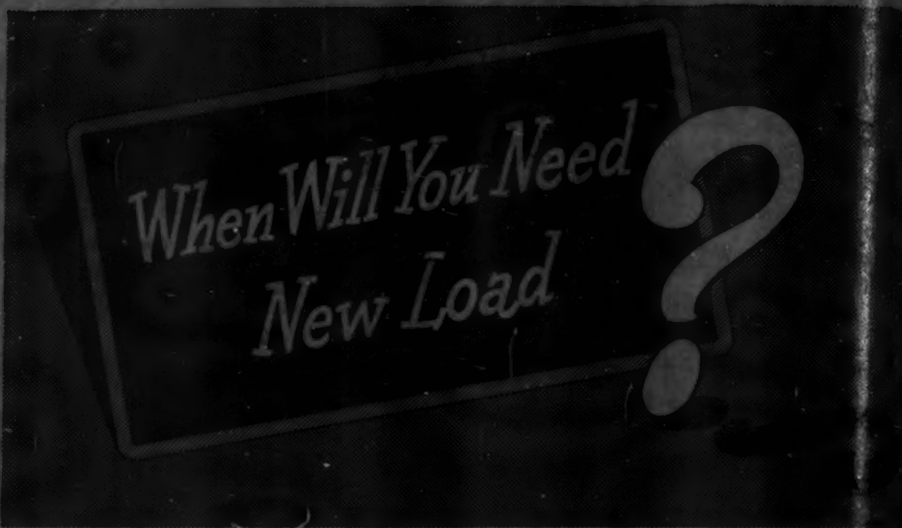

Whether it's in two years or ten years, here's a blue-chip load that *takes time* to sell — and now is the time to start selling it!

Sometimes it takes years of steady work to regain the urban transit load, to sell a new installation of trolley coaches. But with every trolley coach, you gain a new load of 175,000 kw-hrs a year. In a city of 250,000 population, electric transit should consume annually approximately 36 million kilowatt-hours.

This big load is attractive, too. It requires little servicing, and studies show that its demands do not coincide with system peaks. Average annual load factor ranges from 30 to 68. Power factor at maximum demand is 90 per cent or higher, and is excellent at other periods.

At present there are 6000 trolley coaches in service or on order. Economically, there should be an additional 20,000 trolley coaches serving the transit industry. A selling program organized and started now can mean improved profit to the transit operator, better service to the riding public, and more earning power for you when you'll need it. *Apparatus Department, General Electric Company, Schenectady 5, N. Y.*

How can you get ready to cash in on transit when new load is hard to get?

HERE ARE 4 SUGGESTIONS

1. Seriously consider a transit specialist to study this load in your area.
2. Estimate what your transit load should be. (Electrics are economically justified for lines requiring headways less than 12 minutes or where peak traffic on a given line is 400 passengers per hour or more past a given point.)
3. Co-operate with your G-E representative in presenting the benefits of electric vehicles to the transit company and the community.
4. See *Lifestream of the City*, the *More Power to America* movie that shows how electric vehicles reduce traffic congestion and give better service at low cost.

GENERAL ELECTRIC

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